BLANK PAGE

CLERK'S COPY.

VOL. III

TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1940

No. 640

THE UNITED STATES OF AMERICA AND SECRETARY OF AGRICULTURE, APPELLANTS

vs.

ALICE M. MORGAN, ADMINISTRATRIX OF THE ESTATE OF F. O. MORGAN, DECEASED, ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF MISSOURI

FILED DECEMBER 21, 1940

BLANK PAGE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1940

No. 640

THE UNITED STATES OF AMERICA AND SECRETARY OF AGRICULTURE, APPELLANTS

vs.

ALICE M. MORGAN, ADMINISTRATRIX OF THE ESTATE OF F. O. MORGAN, DECEASED, ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF MISSOURI

A [Citation in usual form showing service on Frederick H. Wood and John B. Gage, filed June 25, 1940, omitted in printing.]

INDEX

	Original	Print
Record from D. C. U. A., Western District of Missouri	A	I
Citation and service [omitted in printing]	A	I
Petition in Cause No. 2528	1	1
Exhibit A—Proceedings before the Secretary of Agriculture, findings of fact, conclusion, and order issued June 14, 1933	23	20
Exhibit B—Petition for reinvestigation and rehearing	127	106
Exhibit C—Comparison of so-called "reasonable" unit costs per order of June 14, 1933, and total costs as found by government accountants, etc	155	138
Statement as to petitions in Causes Nos. 2329 to 2378, inclusive	156	140
Temporary restraining order, dated July 22, 1933	157	143
Order continuing in force temporary restraining order, dated September 19, 1933	160	145
Defendants' answer to petitions, dated November 25, 1933	162	146
Decree of December 20, 1934	169	152

Record from D. C. U. A., Western District of Missouri—Con.	Original	Print
Petition for rehearing and order granting leave to file same [omitted in printing]	171	153
Stipulation as to consolidation	199	153
Order consolidating causes	200	154
Order denying petitions for rehearing and entering joint and final decree, dated June 20, 1935	201	155
Mandate of Supreme Court, dated June 2, 1936	203	156
Supplemental answer, filed July 11, 1936	204	158
Amended application of petitioners for leave to amend petitions	206	159
Order dated November 6, 1936, granting leave to amend petitions	209	162
Answer to petitions as amended, dated December 4, 1936	210	162
Decree of July 9, 1937	213	165
Order continuing temporary restraining order, filed August 16, 1937	216	166
Mandate of Supreme Court dated June 3, 1938	219	168
Motion for order staying distribution of impounded funds, filed June 7, 1938	221	170
Exhibit A—Order Reopening Proceedings, dated June 2, 1938, signed by Henry A. Wallace	225	172
Reply to motion for order staying distribution of impounded funds	228	174
Stipulation and modification of order of June 14, 1933, signed October 14, 1937, by Henry A. Wallace	233	178
Answer of New Amsterdam Casualty Company to motion for order staying distribution of impounded funds	239	182
Petition for restitution of impounded funds, filed June 11, 1938	242	184
Decree of June 18, 1938	249	187
Order on petition for restitution, filed June 18, 1938	251	189
Exhibit A—Statement re impounded funds	255	191
Mandate of Supreme Court dated June 10, 1939	257	192
Motion for order to show cause	258	193
Exhibit A—Findings of fact, conclusion, and order issued by the Secretary of Agriculture on June 20, 1939	264	197
Order granting motion for order to show cause	372	302
Joint and several return of petitioners to order to show cause	373	303
Separate return of New Amsterdam Casualty Company to order to show cause	398	319
Motion to strike portions of joint and several return of petitioners to order to show cause	399	320
Notice to take depositions of Henry A. Wallace upon oral examination	400-A	321
Motion for order that deposition of Henry A. Wallace not be taken or in alternative that depositions be taken by written interrogatories	401	322

Record from D. C. U. A., Western District of Missouri—Con.	Original	Print
Ruling of District Court on motion that depositions not be taken and motion to strike portions of return	404	323
Answer to joint and several return to order to show cause	405	324
Answer to separate return of New Amsterdam Casualty Company to order to show cause	409	326
Motion for order directing Secretary of Agriculture to produce and file record and granting right of inspection	410	326
Ruling on motion for production and inspection	411	328
Defendants' objections to petitioners' request for findings and conclusions and defendants' request for additional findings and conclusions	412	328
Petitioners' reply to defendants' objections to petitioners' proposed findings and conclusions, and request for additional findings	420	333
Petitioners' request for additional findings and conclusions	425	336
Exhibit A—Findings and conclusions of Court	430	339
Supplemental findings and conclusions	441	345
Decree of May 29, 1940	442	346
Petition for stay of final order and decree	444	347
Order allowing stay	447	349
Notice of appeal	449	350
Petition for appeal	453	352
Assignment of errors and prayer for reversal	456	354
Order allowing appeal	464	358
Notice to Attorney General of the State of Missouri	466	359
Stipulation re transmitting original exhibits	468	360
Exhibit A—Descriptive list of exhibits	470	261
Praecipe for transcript of record	492	373
Narrative statement of evidence in hearing on order to show cause	497	376
Caption and appearances	497	376
Petitioners' offers in evidence	498	376
Statement of Mr. Berge re appearance of Secretary Wallace	502	380
Testimony of Henry A. Wallace	504	381
Exhibits introduced by petitioners	544	408
Respondents' motions and objections with respect to order of Secretary, dated June 2, 1938, purporting to reopen proceedings, Docket No. 311	545	409
Affidavit of bias and prejudice	547	411
Special appearance of New Amsterdam Casualty Co. and motion to quash and vacate Order of Secretary dated June 2, 1938	550	413
Respondents' further motions and objections with respect to order of Secretary dated June 2, 1938	553	415
Affidavit as to changed conditions since closing of evidence	559	419

	Original	Print
Record from D. C. U. A., Western District of Missouri—Con.		
Narrative statement of evidence in hearing, etc.—Continued.		
Exhibits introduced by petitioners—Continued.		
Order for taking of additional evidence	563	422
Opinion of Secretary on motions	564	423
Letter, Brooke to Gage, Oct. 31, 1938	568	428
Motions of respondents to suppress the report and recommendations of examiner dated Jan. 17, 1939, and for a rehearing	570	430
Letter, Secretary to Wood, Mar. 1, 1939	575	434
Order denying motion to suppress report and recommendations of examiner dated Jan. 17, 1939, and for a rehearing	575	434
Letter, Secretary to Gage, Mar. 15, 1939	576	435
Letter, Gage to Secretary, March 17, 1939	577	436
Telegram, White to Gage, March 22, 1939	578	437
Recital as to exhibits 1 to 5, inclusive	579	437
Exhibit 6—Letter, Gage to Secretary, April 1, 1939	579	437
Exhibit 7—Letter, Secretary to Gage, April 14, 1939	580	438
Exhibit 8—Letter, Gage to Secretary, March 31, 1939	581	439
Exhibit 9—Letter, Dagger to Secretary, April 5, 1939	583	441
Exhibit 10—Summary of respondents' exceptions to examiner's report	585	442
Exhibit 11—Memorandum for Secretary, June 13, 1939	596	449
Exhibit 12—Memorandum for Secretary, May 31, 1939	598	452
Exhibit 13—Memorandum for Secretary, June 17, 1939	599	454
Exhibit 14—Memorandum, Cooper to Kitchen, June 5, 1939	600	455
Exhibit 15—Statement showing selling commission rates for cattle and calves at Kansas City, Missouri	601	456
Abstract of record of hearing before Secretary of Agriculture, Bureau of Animal Industry, Docket No. 311	602	457
Order overruling objection to proceeding	602	457
Offers in evidence	603	457
Testimony of Fred H. Olander	604	459
Respondents' Exhibit 1—Graph and table showing percentage of commissions to sales and purchases, 1926–1929	626	477
Testimony of—		
F. E. Mollin	648	495
E. B. Spiller	657	503

Record from D. C. U. A., Western District of Missouri—Con.
Narrative statement of evidence in hearing, etc.—Continued.
Exhibits introduced by petitioners—Continued.
Abstract of record of hearing, etc.—Continued.

Testimony of—Continued.	Original	Print
Albert K. Mitchell	658	504
Frank H. Betton	662	508
B. C. Biggerstaff	668	513
J. H. Mercer	677	521
B. C. Biggerstaff (recalled)	684	527
M. G. Griffin	685	528
George G. Crossan	688	531
J. C. Vance	690	532
Edward W. Elliott	707	547
James R. Henderson	714	553
John W. Murphy	718	557
James R. Henderson (recalled)	725	563
John W. Murphy (recalled)	727	565
A. J. Maurer	731	568
W. T. Angle	737	573
A. J. Maurer (recalled)	762	595
L. G. Trickett	767	599
W. B. Ecton	767	599
Homer G. Burns	778	608
Howard D. Dozier	824	649
Laurence G. Trickett (recalled)	838	661
W. T. Angle (recalled)	840	663
H. W. Garrison	848	670
Charles F. Vieregg	853	674
Charles H. Haren	864	684
Walter A. Landis	879	698
Charles J. Kemp	883	701
E. R. Ransom	890	707
Harvey M. Pyke	895	712
George W. Hobbs	902	718
J. C. Swift	916	730
James B. Wallace	938	749
W. C. Bradshaw	944	754
Frank Witherspoon, Jr	950	759
C. G. Myers	966	774
J. Williard Olander	973	780
Fred Olander (recalled)	976	783
Charles N. Bird	977	783
Harry Kennaley	982	788
M. L. McClure	984	790
John P. Swift	987	792
Lyle A. Stephenson	989	794
M. L. McClure (recalled)	990	795
John P. Swift (recalled)	998	802
J. W. Hudelson	1000	803
Norris Broaddus	1002	806

	Original	Print
Record from D. C. U. A., Western District of Missouri—Con.		
Narrative statement of evidence in hearing, etc.—Continued.		
Exhibits introduced by petitioners—Continued.		
Abstract of record of hearing, etc.—Continued.		
Testimony of—Continued.		
Lyle A. Stephenson (recalled)	1006	809
A. H. Warren	1008	811
Frank R. Standish	1011	813
W. J. Gladish	1014	816
Thomas F. McDonald	1017	819
Harry Kennaley (recalled)	1020	821
J. B. Lingard	1023	824
Bryant Poole	1024	825
Henry F. Elrod	1027	827
W. M. Liggett	1031	830
B. C. Culp	1033	832
O. E. Hover	1035	834
B. R. Bridgeford	1036	835
Joseph H. Tedrow	1037	835
John W. Roberts	1040	838
James B. Woodbury	1065	860
J. Ed Farrar	1065	861
Wm. E. Curtis	1068	863
R. H. Lewis	1070	865
C. A. Stuart	1073	867
Joseph E. Inman	1075	869
J. W. Roberts (recalled)	1078	871
George W. Hobbs (recalled)	1092	884
Al Coffman	1093	885
Charlie Ford	1094	886
R. A. Willis	1094	886
Laurence E. Tice	1096	887
J. W. Roberts (recalled)	1098	889
J. J. Bachmann	1105	895
Abstract of evidence before Secretary of Agriculture at rehearing	1107	897
Caption	1107	897
Testimony of—		
Glen T. Stebbins	1107	897
H. W. Nickel	1114	903
J. C. Vance	1115	904
Frederic H. Olander	1132	919
George G. Crossam	1149	934
James R. Henderson	1149	934
E. W. Elliott	1153	938
M. Y. Griffin	1166	949
Laurence G. Trickett	1167	950
Charles H. Haren	1174	956
John W. Murphy	1178	959
George W. Hobbs	1188	968
W. B. Ecton	1194	974

	Original	Print
Record from D. C. U. A., Western District of Missouri—Con.		
Narrative statement of evidence in hearing, etc.—Continued.		
Exhibits introduced by petitioners—Continued.		
Abstract of evidence before Secretary, etc.—Con.		
Testimony of—Continued.		
Charles F. Vieregg	1200	979
A. J. Mauser	1205	983
Herman C. Henrici	1210	988
Homer G. Burns	1211	989
J. H. Mercer	1216	993
Homer G. Burns (recalled)	1222	999
John J. Bachmann	1231	1007
Frederick H. Olander (recalled)	1238	1013
John J. Bachmann (recalled)	1252	1025
W. T. Angle	1286	1054
John J. Bachmann (recalled)	1299	1066
Dr. Howard D. Dozier	1304	1070
W. G. Land	1311	1076
Glenn T. Stebbins (recalled)	1311	1077
Eugene Bauman	1315	1079
Laurence G. Trickett (recalled)	1316	1081
Alan Wilson	1317	1081
Frank Witherspoon	1322	1086
R. J. Kinzer	1340	1102
Arthur P. Fielding	1347	1107
W. F. Fletcher	1352	1112
C. B. Grant	1355	1115
Samuel R. Trower	1359	1119
Ernest C. Hill	1363	1122
James B. Wallace	1366	1125
W. M. Liggett	1368	1126
Walter S. McLucas	1373	1131
H. L. Jarboe	1380	1137
J. B. Wallace (recalled)	1390	1145
John W. Roberts	1392	1147
J. C. Swift	1439	1188
C. A. Stuart	1456	1204
G. T. Laird	1464	1211
J. B. Wallace (recalled)	1466	1213
Mrs. Louise M. Moffett	1467	1213
J. H. Tedrow	1471	1217
C. E. Blomquist	1477	1222
Bryant Poole	1484	1228
Grover C. Maxwell	1492	1235
Agreements as to evidence, etc	1497	1240
Abstract of record of third hearing before Secretary of Agriculture in B. A. I. Docket No. 311	1499	1241
Colloquy	1500	1241
Testimony of—		
H. E. Bufkin	1508	1247
F. W. Miller	1513	1251

	Original	Print
Record from D. C. U. A., Western District of Missouri—Con.		
Narrative statement of evidence in hearing, etc.—Continued.		
Exhibits introduced by petitioners—Continued.		
Abstract of record of third hearing, etc.—Con.		
Testimony of—Continued.		
H. E. Bufkin (recalled)	1518	1254
F. W. Miller (recalled)	1522	1256
H. E. Bufkin (recalled)	1527	1260
H. C. Bates	1528	1260
Frank Witherspoon	1543	1271
Application for order approving narrative statement of evidence and stipulation as to transmitting original documents	1557	1281
Order approving narrative statement of evidence, etc	1558	1282
Opinion, Otis, J. (October 29, 1934)	1559	1283
Concurring opinion, Van Valkenburgh, J	1567	1290
Opinion on petition for rehearing, Van Valkenburgh, J. (June 20, 1935)	1570	1293
Opinion, Otis, J. (July 2, 1937)	1573	1295
Dissenting opinion, Van Valkenburgh, J	1579	1300
Opinion, per curiam (June 18, 1938)	1582	1302
Opinion, Van Valkenburgh, J. (April 9, 1940)	1585	1305
Concurring opinion, Reeves, J	1600	1316
Dissenting opinion, Otis, J	1607	1321
Clerk's certificate [omitted in printing]	1629	1333
Statement of points to be relied upon and designation of parts of record necessary for consideration thereof	1630	1333

Abstract of evidence at rehearing

(Offered at Hearing on Application for a Permanent Injunction)

Abstract of evidence offered by the Government

Pursuant to the above order for rehearing a hearing therein specified began in Kansas City, Missouri, on October 6, 1932, before an Examiner of the Department of Agriculture. The Government and the respondents, with the exception of Thomas McDonald, Farmers Union Livestock Commission Company, W. H. Cripe, Producers Commission Association, K. L. Peterson and Company, Harry Conley and J. Ed. Freed were present by counsel. Those respondents not represented by counsel signed an acknowledgment of service of a copy of the order granting rehearing, and stipulated that such service should have the same effect as if served five days before the hearing which started October 6, 1932. Counsel for the Respondents renewed the motion made by him at the previous hearing requesting separate, several and independent hearings with respect to each of said respondents. The Examiner overruled the motion and ruled that the supplemental hearing would proceed along the lines of the original hearing.

MR. GLEN T. SEBBINS, a witness called by the Government, being first duly sworn, testified in substance as follows:

1108 DIRECT EXAMINATION

The position I occupy wtih respect to the livestock industry at Kansas City is that of Secretary of the Kansas City Livestock Exchange.

Government Exhibit No. 100

Government offered in evidence the original record made at the previous hearing and requested that the same be designated as Government Exhibit No. 100.

Government Exhibit No. 101

Government offered in evidence all tariffs of rates and charges which had been filed and made effective by market agencies at

the Kansas City Stockyards since the original hearing in this docket. These tariffs were so offered in order to bring up to date the tariffs shown in the original Government Exhibit No. 1. This Exhibit does not include the tariffs of certain order buyers and cooperative market agencies.

Government Exhibit No. 102

Government offered in evidence Government Exhibit No. 102, which was a certified copy of the tariffs filed by Harry Conley, W. H. Cripe, Feaman and Nolan, Graybill and Stephenson, Great Western Order B ying Company, and K. L. Peterson and Company.

Government Exhibit No. 103

Government offered in evidence Government Exhibit No. 103, a certified copy of Tariff No. 4 of the Farmers Union Livestock Commission Company, Kansas City, Missouri.

Government Exhibit No. 104

Government offered in evidence Government Exhibit No. 104, which was a copy of certain tariffs filed by the Producers Commission Association at Kansas City market.

Government Exhibit No. 105

Government offered in evidence Government Exhibit No. 105,
which was a certified copy of all tariffs of market agen-
1109 cies at those stockyards which had ben filed since Government Exhibit No. 5 was prepared. This exhibit brings up to date Government Exhibit No. 5.

DIRECT EXAMINATION

I have been Secretary of the Kansas City Livestock Exchange since June 1, 1931. I went to work for the National Livestock Commission Company on August 30, 1909 and worked for that company until I assumed the duties of my present office. The National Livestock Commission Company operates on the Kansas City Stockyards. I began as office boy and proceeded through most all phases of the business except the actual selling and buying of livestock on the market. I have acted in the capacity of a yardman but not in the capacity of a salesman. I have read the testimony of Mr. B. C. Biggerstaff as contained on pages 699 to 805 and pages 877 to 894 of the transcript of record in the

previous hearing. My duties as Secretary of the Kansas City Livestock Exchange are the same as those of Mr. Biggerstaff. The present activities of the Exchange are substantially the same as those decribed by Mr. Biggerstaff in his testimony beginning December 11, 1930. In some respects his testimony is applicable to present conditions and in some respects it is not. On page 709 of the testimony of Mr. Biggerstaff the subject under discussion was assessments on members of the Exchange engaged in the livestock commission business at the Kansas City Stockyards. There is one addition to those assessments as enumerated in the record. I will enumerate the assessments which are now made. The assessments now being levied on members of the Kansas City Livestock Exchange are as follows: for the agricultural development fund, ten cents per car on in-bound business, six cents per car on out-bound business; for the purpose of broadcasting market information by radio, five cents per car on all in-bound business, no assessment on out-bound business; for the purpose of reimbursing the Exchange for the expense incurred in the previous rate hearing an assessment is now being made of eight cents per car on in-bound business and five cents per car on out-bound business. This assessment is designed to proceed over a period of years until the association shall have been reimbursed for the expense incurred in the previous
1110 rate hearing. It is calculated that it will take perhaps six or seven years in which to liquidate that expense, to say nothing of the expense which will be incurred in this hearing. The other assessment being made, as set forth in the previous testimony, is two cents per car for a transportation fund on in-bound business. Broker members are assessed for the purpose of the agricultural development fund six cents per car on the amount of business handled by them, and for the purpose of the rate hearing five cents per car. It is the purpose to continue these assessments until the Exchange has been reimbursed for the expenditure involved in this hearing. Those who were not parties in the previous hearing do not have this car assessment made against them. In speaking of in-bound and out-bound business, that means livestock sold by members of the Exchange. On page 718 of the transcript of testimony some explanation is made of the use of the assessment for the purpose of the transportation fund. It might be well here to give some little further explanation. The two cents a car collected for the purpose of the transportation fund is paid by the commission firm and not by the shipper. These moneys are placed in a fund which is kept separate and intact from all other moneys collected by the association. Out of that fund is paid the expense of main-

taining equitable freight rates to the Kansas City market in order that the shipper and the producer may have a free and unhampered movement to this market. On page 720 of the transcript the witness referred to an assessment against individual members of $3.00 for the purpose of a membership fund. In addition to the $3.00 there is now being assessed against each individual member $2.00 which is credited to the expense incurred by reason of the previous rate hearing. That assessment is in addition to the assessment made on a per car basis. On page 780 reference was made to the number of firms then in operation on the Kansas City market. There are now 49 established livestock commission firms at the Kansas City market. There are six firms doing business as livestock commission firms whose business is cleared or handled through one of the established commission firms. There are seven order buyer firms on the market and three firms engaged in the business of clearing livestock for yard traders. These are in addition to the two co-operative firms now in business at the market. Those who have their business cleared are the Henry F. Carnes Live
1111 Stock Commission Company, Link Fasken Live Stock Commission Company, Dave Hamer Commission Company, J. D. McCormick Live Stock Commission Company, Welch Live Stock Commission Company, and Jefferson, Lowry & Davis Live Stock Commission Company. On page 782 the witness referred to the number of members who were then associated with the Kansas City Live Stock Exchange. There are now a total of 247 members associated with the Exchange, of whom 25 are inactive. Ten memberships have been retired since the testimony of this witness, or since Decembers 31, 1930.

On page 877 of the transcript the witness referred to the influence of the hard surface roads upon the market. We have found as a matter of fact that good roads do not have a tendency to increase receipts at the market but have a tendency to increase the percentage of receipts which arrives at the market by truck rather than by rail. The result of this trend in transportation has been to break down the consignments into various numbers, more generally into smaller consignments, which naturally tends to increase the work in handling. We find that where it was first contemplated that good roads might tend to bring livestock to the market which had previously been going to other markets these roads have been developed to such an extent that that is not now a fact. We find that distance is not a factor. We find that the receipts which we contemplated would come to this market as a result of good roads are again going to St. Louis market by truck. There is another factor which the truck has

brought into the picture and that is the influence of the truck driver in determining where the shipper will send his livestock. The truckman is not to any greater extent under any legal regulation or supervision. As a consequence he becomes subject to bonuses or other inducements which might be held out to him to bring his livestock to certain points. As a result, they are brought into direct competition with the markets. This competition is not only from packers who are situated locally at the market, but from local packers scattered throughout the territory, small slaughtering plants, concentration points, and numercus little stockyards which have sprung up in the past two years. There has also come into the picture more predominately than has been the case previous to the last two or three years the community sale. These have had the tendency to create
1112 greater competition for the large public markets. The community sale is operated generally at a fairly well populated town or communitly where stock yards have been established for the purpose of loading and shipment of livestock. Perhaps once or twice or three times a week the producers in that particular territory or within a short-haul distance of that particular place bring their livestock in, where it is either sold at auction or individually. Some of the livestock is shipped out and some of it may go back into the same territory. That which is shipped out or carried beyond the immediate territory may go to a more distant community or to slaughtering plants at various points. I have never analyzed it to determine whether some of it comes to the public stockyards. Our territory for trucked-in livestock is bounded on the east perhaps by distances of 30 to 40 miles; on the north our territory is very limited because of the competition and drawing power of the St. Joseph market; on the south I should say our territory would extend perhaps 60 miles, at which point we would begin to get into territory which is now contributing very largely to the receipts at a little market down at Springfield, Missouri. Our territory south and east is now occupied by a small plant at Sedalia, Missouri, which has been in operation for some little time. Directly east of us there are several loading points where livestock is concentrated, more particularly hogs, for the St. Louis market and other points east. I noticed in the weekly Kansas City Star about two weeks ago that a large concentration point had been established at Chillicothe, Missouri, and out of that territory previous to now this market did draw considerable livestock. South and west of the market we get into territory which is now contributing to a very large extent to a little market at Joplin, Missouri. Swinging around from there in a north-westerly direc-

tion we get into the territory which contributes to receipts at the Wichita market, which would extend out from Kansas City some 150 miles. Going north and west, the territory perhaps from which trucked-in livestock might be received would extend likely to a point of 200 to 250 miles except for that territory lying within a short-haul distance of Salina, Kansas, where another small market is operated. Going on northward, trucks bring livestock into Kansas City from a point as far away as 300 miles, but lying within that territory is another concentration
1113 point at Manhattan. At Topeka, Kansas, there is now established the Morrell Packing Company, which receives both cattle and hogs direct. Swinging on northward, we get into the territory which contributes not only to the St. Joseph market, but to the Omaha market. Included in that territory is Leavenworth, Kansas, where there is a packing plant. Generally speaking, I think we are receiving a greater percentage of our receipts by truck now than formerly. Our receipts have declined since 1929.

We have as a matter of record made three amendments to the rules and regulations of the Kansas City Livestock Exchange since the testimony in the previous hearing.

Government Exhibits Nos. 109–C, 109–D, and 109–E

Government offered in evidence Government Exhibits 109–C, 109–D, and 109–E, bringing up to date Government Exhibit No. 9, the rules and regulations of the Kansas City Livestock Exchange, which was put in evidence at the former hearing.

CROSS EXAMINATION

It has come to my knowledge that the Morrell Packing Company at Topeka is making direct purchases of cattle in this territory and have been doing that since taking over the plant formerly known as the Wold Packing Company. The rule of the Exchange which relates to tariffs or schedules of rates and charges has not been amended but has become inoperative, so to speak, due to the reason that all tariffs and schedules of charges at the Kansas City market are filed by the various market agencies separately and individually.

REDIRECT EXAMINATION

Formerly the tariff to be charged by members of the Exchange constituted one of the rules of the Exchange. A failure to charge that tariff constituted a violation of the rules. Each

individual market agency as a member of the Exchange files its own tariff now. The Exchange makes no rule as to a tariff. The member is at liberty to file any rate that he sees fit. I do not believe that it would be a violation of the Exchange rules if a member would file a different rate from other members. I believe the tariffs now in effect and charged by the members of the Exchange are uniform with the exception that they 1114 are not all uniform as to buying. As to selling they are uniform. I know of no agreement or arrangement whereby they were made uniform. That is just a coincidence. Whereupon the witness was excused.

MR. H. W. NICKEL, a witness called by the Government, being first duly sworn, testified in substance as follows:

DIRECT EXAMINATION

I am Superintendent of the Kansas City Stockyards and hold the position that was formerly held by Frank H. Betton. Mr. Betton retired on January 1, 1932. I have been Superintendent for the last five years. We had two at the time Mr. Betton retired. I came with the Kansas City Stockyards Company in October 1920, as Assistant to the General Manager. I have read the testimony of Mr. Frank H. Betton as contained on pages 558 to 698 of the transcript of testimony taken at the previous hearing in this case. I have a change to make on page 577 of the transcript in regard to our truck-in sheep division. We have since increased the unloading facilities to nine trucks. On page 580 of the transcript, reference is made to the truck-in division where hogs are received. We have added facilities for one more truck. As far as the rest of the testimony is concerned, there has been no change in our physical operation. Since the time of the previous hearing, our truck receipts have greatly increased, which entailed increases in our expenses in handling. With these comments, Mr. Betton's testimony applies to present conditions.

CROSS-EXAMINATION

I have observed through our solicitors that development and increase in the competition from direct shipments of livestock to packers. It has made it harder to solicit business, in view of these new yards coming up. It has made it very difficult for us to get back some of the business which we formerly enjoyed and naturally close-by markets would draw a part of our receipts. In my judgment our receipts are diminished greatly, but as to the per cent I would not say. No definite arrangements

1115 have been made to alter the unloading facilities for hogs delivered by truck so as to place the unloading chutes closer to the pens in which the hogs are yarded. The yardage charges made by the Stockyards Company are calculated on a headage basis.

REDIRECT EXAMINATION

The solicitation of business by the Stockyard Company has been going on so long as I have had any memory of the yards. As far as I know the various stockyards have been soliciting business and competing with one another in that respect during all that time.

RECROSS-EXAMINATION

I recall that a couple of years ago the commission firms discontinued sending out copies of the Drovers Telegram, which is a market paper. This refers to the respondents who are members of the Exchange. To my knowledge, they have not sent out free copies of that paper since then. It is my understanding that it was the judgment of the officials of the Stockyards Company that that change had an effect upon the volume of business at this market. I gathered that it was the opinion that it was an unwise move. It was my understanding that in the long run it was an economical expenditure of money for the purpose of increasing business at the market.

REDIRECT EXAMINATION

In speaking of those who regarded this as a wise expenditure I am referring to our people, the management of the Stockyards Company, and not the livestock commission men.

Whereupon the witness was excused.

MR. J. C. VANCE, a witness called by the Government, being first duly sworn, testified in substance as follows:

DIRECT EXAMINATION

I am office manager for John Clay and Company. I testified in the first hearing in this case, and hold the same
1116 position now as I held then. I have read my testimony taken at the former hearing as far as from page 962 to page 1083. I did not get through with it. The first change which I would call attention to is on page 1020 in regard to the valuation of the services rendered by the partners, most of whom reside at Chicago. Since the former testimony, the Kansas City

office has been charged and is being charged $1,000 a month for administrative salaries. That expense has never heretofore shown up on our books at Kansas City. I mean that the Kansas City office is charged $1,000 a month by the head office in Chicago with administrative salaries. That is not to cover the salary or any part of the salary of anyone employed at the Kansas City office. That is entirely for salaries of partners and I think is the proper charge. The nature of the services of the partners rendered to the Kansas City office for which that charge is made is the furnishing of the necessary capital for us to conduct our business on. We consult them continually about different things and they direct the program and conduct of our office. I do not think they make any other charge for providing capital. We have a local manager here at the Kansas City office who has general charge of the conduct of this office. The management which the partners give is just the general direction of the general policies of the business. I think farther over in my testimony the amount of the capital furnished by the head office to this office is set out. I hardly think it would be so much now.

On page 1025 of the previous testimony reference is made to the provision of our mortgage for borrowers to ship to our firm, and in that former testimony I said that there was a provision in our mortgage for the purpose of saying where the cattle should be shipped. I find that the provision that I referred to is only in case where it is necessary for us to take possession of our security in order to safeguard our interests, and in that case our mortgage provides that mortgaged livestock may be shipped to us or to the open market and sold at public auction or private sale. That is only in case where we deem it necessary to go out and take possession of our security through some fault of the borrower. In other cases there is no restriction put on any of our mortgages by us. Of course, it is expected that the borrower will ship to John Clay.

1117 On page 1046 I referred to the allowance of $2.00 per trip which we made to our employees who used their own cars in going back and forth to the Prospect and Morris Feed yards. Within the last year we have reduced that allowance to $1.50. I think that reduction was made the spring of this year. That was brought about because the concern from which we have arrangements to hire cars reduced its rates one cent a mile, so we just made a different allowance on our employees who use their own cars.

We did not sustain any losses on account of bank failures during the depression.

On page 1070 of the former testimony some reference was made to the larger number of shipments requiring proration, that

is, cooperative shipments. We are handling a great many more trucks now than ever before. Where they used to make up a neighborhood shipment and load in a car, a good many of these same people are now shipping by truck and coming in as individual shipments. Our own truck-in business has shown a steady increase in the number of all three species. In 1929 we sold a total of 17,900 head, in round numbers; in 1930 we sold 23,200; in 1931, 29,000, and so far this year we have sold 26,700, and still have three months to go. The increase in truck-in business is rather noticeable for the reason that the decrease in sheep receipts at the Kansas City market so far this year is between 14 and 15 per cent from last year. In the face of these decreased receipts of sheep we are showing an increase in our drive-in business every year for the past four years. We do not have to do any prorating in respect to truck shipments. The truck driver usually has a stipulated price of 20 cents a hundred, or whatever the price may be, and it is just a matter of multiplying the weight by the rate, and charging the shipper with so much truck charges. We settle directly for the whole charge with the truckman as a rule. We either deliver a check to the truck driver or mail the consignor a check or deposit the proceeds in his designated bank. To a considerable extent with respect to truck shipments we deposit the proceeds to the credit of the shipper. During that period when so many banks were failing, we would have shippers who wanted cash for their proceeds or wanted to buy Kansas City bank cashier's checks. Perhaps they would want us to send their proceeds to some Postal Savings bank in their com-
1118 munity. That involved some extra work and some extra expense because we have to pay a two-cent check tax on our own check and on the check which the bank issues for us. We do not have to pay the tax on the remittance when we deposit the proceeds to the shipper's credit. We must have a number of deposits that will go to one of the stockyards banks and we let those accumulate during the day until a few minutes before the closing hour of the bank and then we write one check to cover a number of those deposits. That check would be payable to the Stockyards Bank to cover those deposits and we would pay one 2-cent tax on that check. In remittance to the shipper by check we have to pay a 2-cent tax on each check used.

On page 1079 in the former testimony, I stated that we sometimes got information about feed bills from nearby feed yards over the telephone. Now, practically all these feed charges come attached to the freight bills presented through the regular channels.

On page 1081 I referred to some of the services in connection with locating cattle on pastures in Kansas and Oklahoma. In

1930 we wrote pasture contracts for our customers and the pasture men for 14,650 cattle. When I say our customers, I mean they are prospective customers. They do not always turn out that way. In one particular shipment in 1930 of 350 cattle, about 100 of these were shipped to the market to our firm, and at the end of the grass season the market was dull and slow. The banker and the owner of the cattle had so arranged to put these cattle on feed out at the Prospect Feed Yards, which we did, and they left those 250 cattle with us and went back to Texas. We eventually worked those cattle off and got more money out of them than they would have sold for at the time. That necessitated some of our own men making frequent trips out there to look at these cattle and see how they were doing and getting them in on what we considered was a good market. The markets declined and the owner of the cattle and the banker who had a loan on them both expressed themselves as very well pleased at the way the matter had been handled. In the 1930 pasture business was a shipment of 1,400 cattle that came up to Kansas about 30 days before the grass was ready, and we made arrangements with a man to feed these cattle for those 30 days and pasture them for the rest of the summer, and the owner of the cattle arranged with us to advance him some money
1119 on the cattle, pay the freight and the feed, and that deal did not turn out so well for us or the owner either. We lost considerable money on that transaction on account of a declining market. We still have the loss confronting us, that is, we have not recovered any of it. Another shipment at that time of 1,400 cattle originated in the state of Nevada. We made the pasture contract, paid the freight, and we reimbursed ourselves. The owner of the land where these cattle were grazed lost his farm through foreclosure during the summer and we found ourselves in a controversy with four different interests. All of this resulted in a lot of questions, and it finally worked out to the satisfaction of everybody. It just made extra work. We had another shipment of 1,400 cattle and we advanced the freight temporarily for the owners. When we came to settle for the pasture bills we found that the owner of the pastures had made an assignment of the contract and that necessitated us to be very careful in seeing that the proceeds of the pastures got to the right place. For another shipment of 1,000 cattle we obtained the pasture, paid the freight temporarily, looked after the cattle nearly all summer, and sold part of them, but the big bulk of the cattle was returned to Texas on account of an unsatisfactory market. We got nothing out of that except the commissions that we earned on the cattle that we actually sold for them. The owners of the cattle both lived in Texas and depended

a good deal of our looking after them while they were up in Kansas. That was in 1930. There was another shipment of cattle in 1930 for which we obtained grass and made up different pasture contracts. There were 5,500 cattle. That business was scattered to St. Joseph, St. Louis, Omaha, and Kansas City markets. Our firm handled a good big proportion of them, but a lot of the business went to other firms. That number of cattle in Kansas naturally required a good deal of time to look after them and our employees spent much time at different periods in the season. In 1931 we did not have so many cattle in Kansas pastures. The situation this year is very different. We had written contracts for pasturage on about 10,500 cattle. On a four-load shipment that came up, the owner of the cattle was unable to pay the freight charge or unable to borrow it, so in his dicker with the pasture man, he required the pasture man to pay the freight. The pasture man borrowed the freight money from us. We carried it along all summer and we sold the last of
1120 those cattle yesterday. We collected for the freight charges we advanced, but I merely mentioned that as a service rendered in connection with that business. We carried the freight on 140 cattle that came up this spring, and we also carried freight on another bunch of 260 head. We also located grass for about 3,600 cattle. Part of those were the 3,200 which went direct to Kansas pastures. 360 head came to the market direct this spring and on account of unsatisfactory market conditions we obtained grass for them and sent them back out to Kansas pastures. It has now been definitely decided that about 1,000 of the yearlings and the two-year-old steers will be wintered in Kansas and grazed next summer. That was the business we figured on getting this year. We may get it next year. These feeding contracts or wintering contracts were made in consultation with our local manager. These cattle belonged to a partnership. One man lives in Old Mexico and the other man lives in Chicago. On another shipment of 3,200 cattle this spring our Mr. Reed met the manager of the company owning these cattle and they spent two or three days in Kansas locating grass. The first shipment of those cattle came to our firm in Kansas City. We sold them and the price was not very satisfactory. The next shipment of cattle was made to Omaha, Sioux City, and Chicago, but not to our firm at those points. This company has now decided to put 2,000 of these cattle on feed up in Nebraska, so they are going out of their territory so far as this office is concerned. That is business that we figured on getting or hoping to get when we went into the deal. During the summer Mr. Reed looked at these cattle a number of times and reported on them to the owners. One time I met the manager of the company in Kansas and

went through the pastures with him. On one shipment of 18 cars we paid the freight on them temporarily and were reimbursed by the bank which has the mortgage on the cattle. The owner of these cattle telegraphed our Mr. Reed to meet him and our St. Louis salesman and asked them to go to look at these cattle and decide on a shipping program. It turned out that most of these cattle are going to the St. Louis market. The one thing that makes it a more satisfactory market at St. Louis is that there is a little more advantageous freight rate to St. Louis; however, I am at the present time handling a claim for
1121 these people for an overcharge in freight on the shipments that went to St. Louis. That is a service that the expense of looking after it is paid at this office, and the St. Louis office is getting the benefit of the business. These matters which I have spoken of in connection with procuring pastures for cattle have all been handled by the Kansas City office. The Kansas City office is manned entirely by an employed personnel. Whatever expense has been incurred in doing these things would appear on our books and records. The time of employees and all would be included in the cost of doing business at the Kansas City branch.

At about page 1093 I mentioned some expenses which had shown large increases from preceding years. Our office rent is still $260 a month. There has been no reduction in telephone expenses. With the new Federal tax, the telephone tax increases about 10 per cent and about 5 per cent on telegrams. The Federal tax is charged directly to the patron of the telephone company or the telegraph company.

I have completed the reading of my former testimony. The cost of postage has increased recently with the new increased rates on postage to about 50 per cent on the first class and air mail. We have some air mail practically every day. That is mostly in connection with getting out account sales to long distances like Colorado or Texas points or the exchange of important matters between the different offices. There will be some shippers that will be along with their consignments and receive their account sales at the office but there will be enough men always where you have to send out two or three different letters with regard to shipments that will more than offset those times when a man is present and takes his account sale with him. To illustrate, in the case of a truck shipment we not only write the owner of the livestock and send him his account sale but we also mail the truckman a check for his dray charges. The truck driver usually is interested only in his truck charges and we do not frequently deliver the account sale to him. We will send out a good many more checks on truck consignments than we will

on rail consignments. Remittances by check and cashier's check and the sending out of account sales are all handled as first class mail. All our mail goes first class except our circular work. The main reason for the use of telephone so much is a matter of convenience. Our shippers seem to want to use the telephone and it expedites the matter very much. Our tele-
1122 graph expense is caused by wiring on checks to see if the banks will pay checks given to us in payment of purchases. We also use the telegraph a good deal in quoting sales of cattle or sheep to shippers who do not accompany their shipments. They may be in Colorado, Arizona, or Texas. They all seem to like to know what their stuff brings on the market just as quickly as they can possibly get the information and it sometimes influences other shipments right away. A good part of our telephone expense is in conversation with the other houses finding out about the condition of the market at those points. That will frequently influence shipments to some other point. My impression is that there is not much difference in the total amount of the telephone and telegraph expense since 1929. I do not know of any concentrated effort to procure a decrease of rent in the Exchange Building. I think we are on about as low a rental basis as any of the buildings in town, particularly the new buildings. When everybody else was getting big rents we were not burdened with any increase. As a matter of fact we have paid the same rent ever since we have been in that building, which has been some 22 years. One decrease in expenses that went into effect this year has been in the salaries of employees. That was during the month of May 1932. That was a 10 per cent decrease applicable to everyone. Another decrease in expenses along the same direction was payless vacations. Everyone was compelled to take a vacation whether he wanted to take it or not. That applied to everybody in the organization. I have heard through employees of other firms, and I know of some who have made similar cuts or even more drastic than that. Counting the payless half month, the percentage cut would probably run up to 15 per cent. There has been a decrease in the horse hire expense. We formerly paid $2.00 a day horse hire, and we now pay $1.50. That became effective two or three months ago. Generally the cost of material and supplies such as stationery has declined since 1929. There may have been one or two people that we had working for us in 1931 that are not working for us now. We might have hired somebody at a little less salary. I recall an employee who was making $150 a month. We dispensed with his services earlier in the year. We hired him again about the first

of July for $125 a month. As between 1929 and 1931, I
1123 believe the salaries were practically the same. In April
we let two employees go and their places have since been refilled or the same employees have come back to work. One was a clerk in the office and the other was a stenographer. We do not actually remit the thousand dollars a month to the main office which is charged up on our books as an expense of operation. That was made effective beginning this year. We carry an account with our Chicago office, a checking account, just like we carry one with the banks, and they simply debit our account with that item of expense.

I specialize on the loan work. It has not required a great deal of my time this year or last year because of the low volume of our loans.

On page 1099 of the former testimony reference was made to our firm's activities in the 4-H Club work. We have been conducting our usual activity in that direction this year in connection with the American Royal. There is a good deal of work in that connection. We have one man in the office that spends a good deal of time at that and an employee in the yards. When the Show is on it is necessary for us to provide extra help in that department, but we believe it is worth while.

At page 1,106 t sum of $10,500 was referred to as covering the capital required for our office at Kansas City and my attention was brought here yesterday to the amount set up this year as being $11,000 for that. After I was excused from the witness stand last night I had the boys in my office run off our outstanding purchases alone for the close of business yesterday, and the amount was $45,600. I mean by that that we had $45,600 worth of unpaid purchase items, that is, cattle that we had bought to go to the country for which we had not yet received payment, or at least the payment had not yet been deposited in the bank. The bulk of that is on stockers and feeders. There may be a load or two of packer cattle in it. I think it is all cattle. The heavy run of stockers and feeders extends from July until the latter part of November. I think September and October have the heaviest receipts of stocker and feeder cattle.

I have with me an analysis of our bank account in the Interstate National Bank for the month of August from which it will be observed that they charge our account with $97.00 for interest on the account during that month. That expense does not ap-
pear on our books anywhere. The financial office in Chi-
1124 cago takes care of that expense. During the month of
August this year there was not a single day that the bank

statement shows that we have a book balance in there running all the way from $5,500 to $41,000. That is, on every day of the month the books show and it is confirmed by our own bank account that we had satisfactory balances in the bank at the close of the day. There were outstanding checks against the account which created realized overdrafts on every day excepting five. On those other days during that month, our realized balances with the bank were in red ink. Those overdrafts amounted in one day to $47,000. On that particular day the bank statement shows that our bank balance was $27,500. We had $75,000 worth of outstanding checks against them, creating a realized overdraft of $47,000. The big sum of $75,000 outstanding represented purchases which we made for the preceding days. On that day the amount of country checks was $33,000 and the preceding day it was $8,000 and the day preceding that it was $36,000. On all of those three days checks were perhaps still out, that is, payment had not been received in funds available in Kansas City, and the items were analyzed as being outstanding against our account. By country checks I mean checks on out-of-town banks given to us for payment of livestock which we have purchased. The need for capital outside of the loan business relates mostly to the buying of livestock and most of that is at this late summer and fall season of the year. It relates mostly to the buying of stocker and feeder cattle during the heaviest buying months. I think our charge for interest in the month of July was $33.00 and something. The analysis which I have here includes proceeds from the sale of livestock. I don't think there was any loan business in that month at all.

There has been no general policy in regard to retrenchment of expenses involved in advertising and soliciting. The policy has been to curtail expenses as much as possible every place we can. There is a difference of opinion whether it is advisable to abandon our advertising campaign or spend less money for advertising when our volume is down. Some people think that that is a poor time to quit advertising, and others think that it is the time when you should exert more effort in that direction. We have worked hard to try and maintain our volume of business and the harder we work the more money we will spend at it. I do not know just what the figures will show on that, but I know that I have worked very hard, all of us have worked very hard, trying to maintain our volume of business. We have not been able to maintain it at the 1929 level in respect to sheep and hogs particularly. One reason for the decline in the sheep and hog business is a decrease of about 15 per cent in the receipts of sheep at this market this

year as compared with last year. Another factor is the situation that exists at Denver at the present time under the new freight schedules. In January of this year the railroads put some new rates into effect. Formerly we could buy sheep here on eastern orders and go on with them from point of origin to destination. That was taken away from us in January of this year. That condition does not exist at Denver. Denver will show, I think, an increase in volume this year due to that fact. Another thing is that more fat lambs have gone direct from Utah points to eastern orders this year than heretofore just on account of the satisfactory freight charges. I do not know how the hog receipts compare. One thing might be that the employee who sells our hogs is not a member of the Exchange and does not get out in the country at all to try to build up his hog business. We have to depend entirely on our advertising and what we can do by correspondence.

On page 1153 of the former testimony the matter of liability insurance was referred to and I testified that our firm did not carry any liability insurance. I think that condition has been changed and that we do now carry blanket liability policy which our head office provides for and the expense of which is paid at that office and does not appear in our expense. That covers employees' liability in case of accident and accident to customers whom we are transporting to and from the nearby feed yards. I do not believe we carry mortgage and theft insurance. I think that we did formerly but some different arrangements were made in Chicago with some attorney to handle those cases for us, and the expense of these attorneys is charged at Chicago and not at this office. Whenever an occasion arises we immediately refer the matter to the Chicago attorneys. We have not had any loss of that nature lately but we have had a good
1126 many narrow escapes. Except as I have explained and modified or changed my former testimony, it will apply and does apply to conditions as they exist now.

CROSS-EXAMINATION

The Morris feed yards have added to their capacity and have built cattle feeding sheds. It is my opinion that more cattle are fed in the Prospect yards than ever before. As a rule that involves additional work on the part of the commission firms. Those cattle are owned by people who live quite some distance from here and they depend on the commission firm to supervise the feeding of them and watch the operations rather closely. If we have any cattle feeding at those places we will make one trip a week at least to see how they are doing, and report to the

owner. Frequently it happens that we take the owners or their employees out to the yards. I think there is a liability in connection with these trips insofar as injuries might be suffered through automobile accidents. We have been fortunate enough to escape them so far.

The higher taxes relating to telephone and telegraph, postage and checks took effect in 1932. That did not serve to increase our expenses in 1931, and such increases in expenditures would not be reflected in the audit of our business for 1931.

I do not think we could operate the business of John Clay and Company here at Kansas City on a cash working capital of $11,000. I believe it would be impossible. The total volume of our sales and purchases in 1931 amounted to $12,267,000. I do not think a cash working capital of $11,000 would adequately safeguard the handling of that amount of money and protect it from the emergency and the business hazards to which it might be exposed as it passes through our hands. One day this week it was necessary for us to draw on Chicago for $25,000. On another day it was necessary to draw on them for $40,000. Yesterday it was necessary for us to draw on them for $25,000. We could not have done what we did do this week if we had been limited to the sum of $11,000 in working capital. Our cattle purchases this week at the close of business yesterday amounted to 98 cars.

I think that every outlet that we have or provide for live-
stock is a benefit to the market, and if we can, with a
1127 reasonable degree of safety, provide credit for a limited
time we are benefitting the market just that much, and as we benefit the market and relatively increase the price by adding competition we tend to add selling volume to the market. As far as I know that is the attitude of practically every market agency on the yards. They go out of their way to get additional buyers and additional competition to center itself on the market and create a competitive demand.

I think the activities of the firm in the loan business has been a very big advantage to the market, for the reason that we maintain houses at Chicago, Sioux City, St. Louis, and shippers to those markets obtain their feeder cattle at Kansas City as a rule. The more cattle we find a buyer for we are helping the market and are helping the producers or shippers to this market, we are helping to create a demand for his product, and I think that any expense at Kansas City in connection with our loan business is offset by that benefit. It is a benefit to our agency because it tends to reduce its unit cost when we increase the volume of the work and especially when we increase our own volume. I think

it is true generally that the loans made by John Clay and Company have served to direct the business to our firm and help control it. While our activities here may benefit John Clay and Company in the St. Louis or Chicago or Sioux City offices, their activities in turn may and do benefit us here. John Clay, F. H. Connor, and Alan Wilson personally supervise the management of the commission end of our business. Mr. Clay has had over fifty years of experience, Mr. Connor about forty-five years, and Alan Wilson about thirty years' experience in the commission business. In my opinion their knowledge of the industry and their acquaintance with those engaged in it and the name of John Clay and Company are of advantage to our office here in securing business. Their actual activities in the supervision of business and contracts are an advantage to us in the management and in handling of the business here.

The item of $355 covering charitable donations in our audit for 1931 covers in part the donation made to the Allied Charities of both Kansas City, Missouri, and Kansas City, Kansas. Part of it was made to the Boy Scouts, Girl Scouts and Camp Fire Girls. I think there might have been some flowers charged to charity on account of funerals of deceased patrons. I think that was a very reasonable amount. As a matter of fact the charities campaign manager this year has already requested us to increase our donations to them by 150 per cent. It is operated under the supervision of the Chamber of Commerce and is conducted as a community chest proposition. It serves to relieve distress and poverty that would probably have to be otherwise relieved at public expense. I think all of the items of expense which I, as office manager, knew the firm of John Clay and Company to incur in the year 1931 would be considered reasonable and necessary in the conduct of our business. We are endeavoring to reduce expenses every place we can without jeopardizing the business. We are doing that as conditions change and demand it. It is part of our gospel to run the business on as economical a basis as it is possible to run it and still maintain its efficiency. We preach economy all the time. We installed within recent months three-minute egg timers at all of the telephones so that when a fellow started to talk on long distance he could set his three-minute egg boiler and try to gauge his conversation to that extent. The idea struck the fancy of one or the bosses so favorably that he insisted that we supply all the offices around the circuit with a number of those timers. There is no expense charged to our Kansas City office in connection with the employment of attorneys to represent us in any matters involving the sale of mortgaged or stolen livestock.

1128

The same is true with reference to the expense incident to the liability policy which I referred to. To a certain extent the contracts and intimate acquaintance established by our salesmen in their work in the country and through the operation of a loan business are of value in protecting against or minimizing the hazards involved in the guarantee of title which we put on the livestock ourselves. Our men in the country pick up certain information of that kind which they impart to us and enables us to protect ourselves in some instances. The information which we get through statements of our customers for whom we carry loans is of some value to us in knowing how their financial affairs are arranged. It is an additional safeguard in the disbursement of proceeds. If we know something about the financial conditions of the men for whom we are selling cattle we have
1129 a pretty good idea of whether or not the livestock is mortgaged. Having that information we exercise more diligence perhaps in handling the proceeds than we would if we knew nothing about his financial condition. The more information we have about our shippers works to our advantage. That would undoubtedly be true in connection with the operation of the business of other market agencies at Kansas City.

The gross commissions of my firm for 1929 were $148,600; for 1930 they amounted to $158,700; and for 1931, $157,100. The gross commissions for the first nine months this year were $93,900. There was an increase in our sheep business in 1930 over 1929. That increase extended into the year 1931. Our firm does relatively a greater volume of sheep business than other firms or the average market agency at Kansas City. A substantial portion of our business here at Kansas City has been the sale and handling of sheep during the years mentioned. The total value of stock bought and sold during the year 1930 was $17,000,000; in 1929 it was $20,300,000.

REDIRECT EXAMINATION

The expense incident to the existence of the Prospect and Morris feed yards making more work necessary for our firm is reflected in our records. Those yards existed in 1929 and 1931 as well as at the present. Notwithstanding the fact that in 1931 we handled considerably more livestock than in 1929 the gross value in 1929 was much higher. That was due to a difference in market prices. I cannot tell the amount of cash working capital needed by our office here. Fortunately there never has been any limit to what we could get hold of very quickly if we needed it. It varies from day to day and from season to season.

I said that we made no segregation of cost or expense as it pertains to buying and selling. I believe the business can be handled at less expense together than it could be handled separately, that is two different departments, one of which would handle the selling end of it and another department handle the buying end of it.

The business has not been profitable in the last two or three years. That has been due to the declining markets and
1130 loss sustained in connection with these loans. These losses, however, are not reflected in our profits or losses at the Kansas City office.

Mr. Clay devotes his personal supervision to the business now in the same way but I do not suppose quite as much as the other partners. I think any business could be conducted without any donations to charity if they had to. Our failure to make donations would not affect the volume of our business. I feel that as a part of this community we should contribute to the charities of the community.

The Chicago office has always taken care of the mortgage and theft liability. John Clay and Company does a more extensive livestock loan business than the average market agency at Kansas City. John Clay and Company's business at Kansas City is conducted entirely by his employees.

RECROSS-EXAMINATION

We made a comparison of the gross revenues under the present tariff No. 3 compared with the former tariff No. 2 for four weeks commencing May 23. The decrease under the new tariff as compared with the old tariff was 8.6 per cent; on cattle it was 8.3 per cent, on hogs 16 per cent, and on sheep a little over 7 per cent. I do not think a comparison for a four-week period is an accurate comparison.

REDIRECT EXAMINATION

As office manager for John Clay and Company I have had experience in applying tariff No. 3 and tariff No. 2. One advantage of the new tariff is to cover the situation in regard to the two 36-foot cars being used instead of one 40-foot car, or five 36-foot cars being used instead of four 40-foot cars. There is also the situation which has arisen quite recently with respect to different railroads now using a very low minimum on short-haul stuff. I think they provide for a 10,000 pound minimum on nearby shipments, the reason being to combat the increase in truck business. The extra draft charge and the charge of five cents each for extra checks over one will in a manner take care of the two-cent tax on checks and additional cost of postage. I have in mind a

shipment of heavy weight grass cattle that load about 23 to
1131 the car, cattle weighing 1,200 pounds. Under the new tariff
that class of business on the headage basis works rather to our disadvantage. It makes a pretty deep cut in the present rates over the old rates. I have no other disadvantage in mind. I do not think our office has experienced any difficulty in applying the new form of tariff. Tariff No. 3 is the tariff approved by the Livestock Exchange and used by all of its members. My firm did not make up the form of this tariff; I do not know who did make it up.

RECROSS-EXAMINATION

Before this tariff was filed by our firm we did personally assist in running tests of different forms of tariff as applied to different sorts of consignments. We applied some tariffs at the other markets and applied different tests. We did assist in making investigations as to the effect of different suggested forms of tariffs. I consulted with Mr. Gage several times in regard to the matter of the formulation of a different tariff. In referring to the change in the railroad minimums and the adjustment of the new tariff to that situation I had in mind the advantage which would arise out of the fact that it applied itself more equitably to the volume sold rather than any increase in revenue as compared with the other form of tariff.

REDIRECT EXAMINATION

In saying that the Secretary's tariff would be $13.00 on the 12 head of cattle shipped in a car I overlooked the provision that the drive-in rates would apply when a car contains less than 14 cattle. In a car containing 15 cattle the commission would be $10.50 under Tariff No. 3 as compared to $13.00 under the Secretary's tariff. That difference is due to a minimum prescribed in the Secretary's tariff. I believe the employment of a minimum and maximum in a tariff is liable to bring about rather arbitrary differences.

RECROSS-EXAMINATION

I think some consideration should be given to the value of the commodity handled in respect to the differentiation of rates as between species or classifications within species. We do
1132 not get very many complaints about charges. I believe
that consideration ought to be given to the ability of the traffic to bear the rate in so far as different commissions are applied to the different classifications and species.

Whereupon the witness was excused.

Mr. FREDERIC H. OLANDER, a witness called by the Government, after being sworn testified in substance as follows:

DIRECT EXAMINATION

I am the same Mr. Olander who testified at the former hearing in this docket and whose testimony is contained on pages 29 to 387 of the transcript of evidence in that hearing. I hold the same position with the National Livestock Commission Company now that I held at that time. I have read over the testimony sufficiently to refresh my memory as to the statements I made at that time. There have been some changes since 1929. The larger part of my testimony has to do with the operation of the business at the yards. I went pretty thoroughly into the details as to how cattle are handled from the time the train which conveys them to the market is set at the chutes until the account sale is made out in the office. As far as the actual operation of the business at the Kansas City market is concerned there has been very little change. On page 36 the question was asked me: "Where principally do the fat cattle come from to the Kansas City market." Since I testified the feeding of corn to cattle in the State of Texas has been accentuated to quite some extent, and we are also getting now fat cattle from the State of New Mexico in larger numbers than we did at the time of my testimony.

The volume of rail shipments to our firm has decreased materially and we do not need at the present time more than one train runner. We have been able to economize there on the expense incident to the train running. We had two train runners in 1931. On pages 54, 55, and 56 the testimony was given with reference to plural ownerships and the handling of plural ownership consignments after they reach our pens. Since 1929
1133 the truck receipts of cattle to the National Livestock Commission Company have increased and while rail volume is less, the plural ownership shipments in proportion to that volume have increased, making it necessary to have more pens available for the handling of cattle both by rail and truck. In our case we have been handicapped by reason of the tightening up by the Stockyards Company of their pen space area in which we lost ten or twelve pens that we formerly had. The number of units has increased and the cattle arriving by rail must be sorted a large number of times. I do not ever recall in my experience as few carloads of cattle coming by rail to the market from one owner that required no sorting. I think the tightening up in the pen space affected quite a number of firms located north of the Exchange Building. This tightening up was caused by

a desire to eliminate one of the scales at the north end of the yards and to provide additional facilities for the receipt of truck-in livestock. Since the time of my previous testimony we have employed a man who devotes the major part of his day's time to the bringing of cattle consigned to the National Livestock Commission Company from the gates to our pens. At the time I testified that work was being done by a concern there that was doing the yarding for a number of firms and it was not satisfactory to our customers. We hired a man full time to take care of that particular business. That change came about in February 1931. The customers in the country are becoming more exacting with reference to their commission representatives visiting their feedlots in order to appraise their cattle and advise them what to do. This has been brought about primarily by reason of the fact that the margin upon which the cattle feeder operates today is more narrow than it was in 1929. It requires more careful watching of the markets on the part of stockmen in the country because we have been in a period for several years now of very erratic, uneven markets, and during the course of a business day we may get many more calls from customers in the country wanting to know about the state of the market and what we think they ought to do with their cattle than we did back when cattle prices were more favorable. I run into other commission men in the country when I go out occasionally, but I never have heard of any instance
1134 where a stockman in the country would invite two men at the same time to price his livestock. Of course it might be possible that he might want to use one man's judgment against another's. The point I wanted to make is the fact that we have been restricted lately in making trips at the request of customers in the country by reason of the fact that the revenue today is not what it was in 1929 and so many years prior to that. We must exert a more careful supervision if possible over our business and try to make every penny count, because, if we do not, the first thing we know it is going to be just too bad. In the case of my own firm every item of expense that we carry on our ledger, country trips, postage, and stamps, advertising, market information, all show a big decrease in 1931 and 1932 as compared with 1929. In my former testimony we were limited in the kind of a pattern we wanted to cut for our particular business by the cloth that was handed down to us, and I do not think that there is any man who would not think perhaps that is a good thing. I think, in my own personal affairs, if I had had to have limitations put around them, I might be better off today, but this work in the country

is advantageous to the commission man as well as the man who owns the cattle in that he is permitted to keep contact with people in different communities and know their conditions and know the way they handle their livestock. That better fits the commission man to represent the owner when he comes to the market. It seems like every year it is becoming a little more difficult to dispose of cattle, requiring more time to sell a number of cattle than it did some years ago, and, of course, this condition has been accentuated by reason of the depression that has existed now for some time. At the time I testified we had two fat-cattle salesmen and we still have two fat-cattle salesmen. One is devoting more and more of his time to the buying end of the business. We still have two butcher-cattle salesmen and one calf salesman. Instead of two hog salesmen we now have one hog salesman, the business not warranting the retaining of two hog salesmen on the yards. The reason for that was the decline in the volume of rail hogs. Our truck receipts of hogs have increased since 1929, but our rail receipts have dropped off about 75 percent. We still have a stocker and feeder salesman.

We have a different sheep salesman than we had in 1929.
1135 He is a man who owns his own business and handles our sheep on a half commission. We eliminated one hog salesman the first of this year. The change in the sheep salesman was made some time this spring. The reason we made the change in the sheep salesman was because of the fact that we figured we had too much office space and we asked Mr. Tice if he would not move his office from his then location into one end of our office, and he agreed to that. Mr. Tice is now selling our sheep. It has been much more satisfactory to us from the standpoint of decreasing the amount of rent we pay as well as having him available right there when we need him. It decreased our rent $20.00. We have had a condition growing in the livestock trade at Kansas City that has been giving all of the cattle salesmen considerable concern, and that is the difficulty in disposing of the grass cattle, grass fat cattle. It seems that starting five or six years ago, packers became, packers started to discriminate against buying grass fat cattle for reasons of their own, and that condition has been growing worse and worse each year until now it is awful. The discrimination started before the depression, when times were very good. It is due to a discriminating consumer demand, that would be my conception of it, that the people do not want grass beef to eat, and then the large industrial centers down east that used to take so many of our grass cattle, particularly the common quality grass cattle that we refer to as Mexicos, these people in late years have lost out

in many cases in their employment and there is not the call, there is not the demand for that grass beef.

The qualifications of salesmen have not changed any, but it has been necessary during the last few years to reduce the wages of these employees quite substantially, and while it is rather difficult to sense in a man whose salary has been cut, a lack of, or rather a lessening of his loyalty to the organization or to the man whose livestock he sells, there is always a chance for that. In my own firm as far as our yard men are concerned, we have them down pretty well to pre-war wage level. We have had to put in the background any feelings that we might have as to the real worth of our employees in dollars and cents because it has been a proposition of paying them what we could afford to pay, and reductions in our own firm have ranged from 16 to 50 per cent from the review year of 1929 as compared to
1136 the present year of 1932. Starting in 1931 we made some reductions in instances of some persons from the second or third year after our organization started in December, 1926.

In the case of my own firm we do very little advertising in magazines or newspapers. We have tried to limit that from year to year. The extent of it at the present time is an advertisement that we carry twice a month in the Kansas Stockman, the official publication of the Kansas Livestock Association, and in a few county publications or farmers' guides as they are commonly known. At the time of the last hearing we were carrying some advertising in one of the local Metropolitan dailies and since that time that has been discontinued. I understand in the Secretary's order that the large share of the advertising expense incurred by commission firms was eliminated, and that in this elimination was part of the expense incurred by commission firms in keeping the country informed on the trade from time to time. It is my opinion that it is unfair to the commission firms to eliminate that expense because of the fact that the country desires it. In the case of my own firm we send this market report weekly and with the exception of several hundred prospective names we send the market report only to those who patronize our firm with their business. In other words it is a medium of information rather than a medium of advertising, and for that reason I consider it unfair to eliminate from consideration of the cost of doing business the major part of that expense. It has not come to my direct attention in any instance that the discontinuance of free subscriptions to the market paper has hurt the market in the decrease in volume or anything of that kind. If consideration is given in the construction of a rate for the services of a commission firm along the line of what a firm should

reasonably expend for purposes of advertising and informing their customers of the condition of the trade, and that consideration take into account what expense is necessary, I think perhaps there should be certain limits put around it. I think most businesses budget their expense along that line. It is pretty hard to tell just what amount is necessary. For instance, at the present time, due to the greater competition that we have at the market we are required to perhaps spend more than we otherwise would if we didn't have that competition. I think that we per-
1137 haps have done more in the way of attempting to get business in the last few years at the expense of salaries than we have in my experience. The owners have reduced their salaries, and we realized several years ago that, with the advent of the Government subsidized cooperative down here, that it was going to mean we were going to have to go out and work harder in order to maintain our volume, and we have had that to contend with, and it has made a real problem for us, to know just what we can do in the way of expending money for the purpose of trying to maintain our volume. We are handicapped in our own firm by reason of the fact that we do not make any loans. These large firms that have big financial resources can go out and make loans and especially in times like these when so many stockmen cannot get credit at their country banks. A firm that is in the loan business can take care of them and in that way maintain their business to a much better advantage than my own firm where we must depend entirely upon the business of those who obtain their finances from other sources. In a firm like ours it is a problem to maintain the volume that we would like to maintain in the face of reduced revenue, in the face of a diminution of the volume at the market, and in the face of the competition in the form of cheap money that this competitor that I just mentioned has access to. There are some small firms down there that do a loan business. I do not know what percentage of the firms do a loan business.

As to the percentage which a firm could in wisdom and good business sense afford to spend out of its revenues for business-getting and maintenance I think that it would vary with different firms. Some firms with a large number of customers in the country might by reason of that large number be required to spend more money than a firm with a smaller number. I really think that newspaper advertisements and specialties and novelties, which are memorandum books and pencils, properly belong under the head of advertising, but I do not agree that these letters of market information which go to our customers in the country are properly items of advertising nor the postage incident to the sending of them. We send out a letter, either one

printed on paper or one printed on a card each week, and
it contains a story of the market for the first part of
1138 that week and quotes the prices that various classes of
livestock have commanded during the period of the week that the letter applies to. We send it out at the time of the week so that it will reach the man or men for whom it is intended in time so that he can make up his mind if he desires to patronize the following week's market or the market the first part of the following week. He has at least some idea as to what the market has been and has our comments as to any particular conditions of the trade that would give him advance information of what he may expect the following week. There is sometimes a very congested condition in the beef trade at the time this letter goes out and the letter sets it out, and that is an indication that possibly the market the following week will not be good by reason of the fact that there is a congestion of meat in trade channels. It has been my experience that the trade looks forward to these letters. At certain seasons of the year we eliminate from our mailing lists the names of men that do not come except at another season. It may be that in some particular instances these men may have livestock at that particular time that we know nothing about, and they write in and want to know why they have not been receiving the letter. In trips that I have made to the country I have come across instances of that kind where men want to know why they have been cut off from our market letter service. In my opinion it is a service that is rendered to our customers that is valuable. The mailing list is not made up exclusively of names of our own patrons. We carry a small prospective list along with those which I think I can safely say that over 90 per cent of those we circularize with these market letters are people who consign their livestock to us. Aside from daily correspondence that we have with certain people, which is a continuous thing in the commission business, the market letters are the only kind of circulars we send out. Of course, personal letters would not properly be classified as circular letters. Some firms use cards, some use multigraphed letters, some use printed letters, and some use four-page papers. Our firm does not send out general circulars just for the purpose of soliciting patronage. I think it has been done. I have written to men to tell them I would like to have an opportunity of
serving them in the sale of their livestock. In this report
1139 of ours I write the cattle end of it, and the circular is
written by our own people. It represents our own views of the market. The information in all the market reports, whether gotten out by the Bureau of Agricultural Economics or the Daily Drovers' Telegram, would be similar in character.

That is going into a description of the trade from the viewpoint of that particular writer. I am conceited enough to think I can write a better market report than some other people can. Our circular summarizes and draws together with general information which may be gathered from various sources and gives to our patrons the slant of our firm on the market. In these market letters we usually carry quotations as to certain sales that we make. We instituted that at the request of a patron. The patron stated that if he knew what his neighbors' cattle brought it would help him in forming an opinion of what his own cattle would bring. We carry sales of the various men's cattle and try to pick them up in various communities and localities in order that people may be advised as to what a certain man's cattle brought. I think there is a certain personality to our market reports.

Traveling is divided into three divis'ons on the blue audit. When a man travels in the country I think as a general rule, aside from the work that he does in appraising the livestock of the farmers that he contacts, he will also do some soliciting. That varies with different individuals. We have men on this market that have never asked a farmer for his livestock. Personally I do very little asking farmers for shipments when I am in the country. My trips are usually confined to localities where I am known and where I am requested to come. It is difficult the way the business is changing at the stockyards to keep the various items of expense within the bounds that we may perhaps like to keep them. This livestock business is undergoing a marked change. Small markets are springing up all over this trade territory. I think I can name as many as twenty little markets that have grown up in the last few years that are intercepting the volume that this market used to get. Those are small markets and they are within a radius of a hundred miles of Kansas City. Thus nearly every little country town has a community sale once every week or once every two weeks.

1140 Farmers bring their livestock in there and dispose of it.

All that is making it more difficult for a commission firm to maintain its volume. We have either got to go ahead and expend more money and more effort or we have to get out of the picture. With respect to those different points along with the feeding stations like Morris and Prospect, livestock can be shipped from country points into these places and go on from there with fewer restrictions than they can on the great competitive markets of the country like Kansas City. We have certain restrictions placed on these markets that these other yards do not have. A change of ownership cannot be made at Kansas City any more and use the through billing privilege. Livestock

can be shipped to Morris or Prospect feed yards and after change of ownership go on using that same billing. That has worked a hardship. Another thing is this re-adjustment of railroad rates, the advantages to the shipper in the way of smaller rates for the long haul shipments has cost us at the Kansas City market, and I refer now not only to the National but the market, a good many hundred carloads of cattle from that country feeding station near Fort Worth, Aledo, and Cresson, Texas, that have gone right through our market this summer direct into Chicago because they can go on to Chicago from Kansas City, they can go on to Chicago from the point of origin for just a very few cents more than they could come to the Kansas City market. That has had a tendency to carry this right through our doorway to foreign markets whereas they used to come in large numbers from the Kansas City market. In the case of my own firm we made several trips down into that section and bought several hundred head of those cake-fed cattle for parties in Iowa. We went down there at the request of these Iowa parties. I think consideration should be given to this matter of allowing the privileges to these little outlying points and refusing the same privilege to a great market like Kansas City that is responsible for maintaining for the farmers of this country fair registration of the values of livestock. I have known of some instances of men that have been very successful in acquiring business by going out into the country and merely asking farmers to ship their livestock to them. Personally I am not constituted in that way, but it may be possible that I will
1141 have to resort to that if the volume keeps slipping from my own firm as it has in recent years. The main thing that holds me in this business is the contact that we have with the men who ship cattle to the market, and the fact that I have an opportunity to contribute in my humble way to their service. These contacts which frequently are classified and spoken of as appraisal trips have the dual effect of helping the farmer in his marketing of livestock and also helping the commission firm in obtaining and holding business. The item of travel in connection with conventions and meetings has always had a part in the operations of the commission business. The conventions are meetings of livestock men and we do not go to these conventions just on our own initiative, but practically always we are invited. I think it is safe to say that the larger part of the membership at Kansas City was always invited to the meeting of the Kansas Livestock Association at its annual convention. In my own case I have had annual invitations to attend the Nebraska Stockgrowers meetings and other stockgrowers meetings located in different parts of the country. At the Kansas meeting an op-

portunity is provided for the commission men and the pasture men, and the owners of the livestock to get together to try to deal on pastures. It really is economical for the reason that it puts the three men together at one place at one time. That is about the time the grass pasture deals are being made, and while there have not been many deals made at the convention in the last couple of years because of the difficulty of the pasture man and the owner of the cattle getting together, the cattle owner demanding that rates for the pasturage be reduced materially from what they were a few years back, still at the same time in years past many thousands of acres of Kansas and Oklahoma pastures have been leased at these meetings. The other meetings that I referred to are meetings of stockmen. I have an invitation on my desk at the present time to come down on the 14th for a cattleman's meeting at Eureka, Kansas, and it has been an annual affair now for a number of years past. I think these contacts are advantageous to the producers of livestock and to the commission man who sells it. Personally I think the item of local and miscellaneous entertaining should be held to a very low maximum. We are called on at different times of the year when certain patrons are on the market to entertain them. It has been very seldom in my own personal case that any expense we
1142 have had in entertaining customers is charged to the firm.

We have some men who come from long distances and when they come they spend several days. In the course of those days they expect some of our people to be with them, and the expenses incurred are charged to the firm. I have always preferred to take care of those items personally, but other members of the firm do not look at it like I do.

I think the Exchange has been a real benefit to the farmers of the country who patronize the market, and in order for that organization to function it is necessary for the members to supply money to the organization to keep it going. I would not care to operate on a market that did not have an Exchange to do the things that we have outlined above in protecting the interests of the men on the market, as well as the men who patronize the market in the sale of their livestock. I think that pretty generally among farmers the benefit of the Exchange is a reality and that they would not object to including in the cost or in the charge that they pay an amount necessary to maintain that body in the work that they have undertaken, and which they have been carrying out these many years. I think that the expense of the radio broadcast by the Exchange can be properly allocated to the maintaining of business, but at the same time it is of tremendous value to the men in the country. You cannot imagine what a radical change these radio broadcasts have made

in the livestock business. It is information that a man gets right now, and many men who have radios in their farm homes make it a point to be at home at the time of some of these broadcasts. They get the state of the market and in many instances at points within a radius of 200 to 250 miles they can get those markets and have their livestock on the market the next day. I personally believe that the rendition of helpful service to the man in the country who produces and markets the livestock is responsible in large measure for the maintaining of the clientele of farmers to my particular business, but at the same time I do not think that that is all of it. The personal help that I can give through advice or counsel to these farmers along with the information that we send them from the firm from time to time and the efforts that we put forth, all of them come in the picture in maintaining this business. I do not think that we have been extravagant in our own firm in the expenses that we have gone to as set out in this audit that we have been talking
1143 about. We have been forced, however, because of the revenue coming in, to curtail the amount of market information that I would like to send to the eastern corn belt states. Those states furnish many buyers for our market, and we would like to represent as many of those men as we can in the selection of the stocker and feeder cattle. I have not spent as much money in the east as I have in years past and as I would like to do now, but the information as to what percentage we spent in the National you now have. I do not know what it is, but it has all been expended in good faith and with the desire to maintain our business and at the same time be helpful to the men in the country that we serve or those that we strive to serve. The expenditure for these items will be governed to some extent at least by the prosperity of our business and the amount of our revenues. The number of firms at this market have been decreasing, and I do not believe that it would follow that as the result of the expenditure of money and effort on the part of one commission firm or a number of commission firms which would increase the volume of business, that it would naturally follow that more firms would come in and pick up that volume. The business in its present unattractive form in which condition we find it at the present time, I do not believe is conducive to drawing new people into it. The fact of the matter is we have had a very few additions to the business here. It is a business that has never been what you would call a highly profitable business and it seems that people now-a-days, or in times past at least, have tried to seek those businesses that were highly remunerative. It is common knowledge among those who have spent years of their lives in this business that you cannot expect any big profit. The very

nature of the business requires that we carry a force that will take care of the peak load or a large part of it, and yet when our load is very light it means that we must carry an overhead that other business may not have to carry. You cannot go on the street and pick up a man and bring him into the yards and hire him for a day or two to do this business. We want to keep men that are skilled and experienced and in order to have them when we need them we must carry them at periods of the year when their services, when they are not required to render as much service as they do when the peak load is on. In years of large volume, the business is naturally more profitable
1144 than it is when the volume is down. I can not testify more conclusively along the line of the competition afforded by the Producers Commission Association on account of the help which it obtains from the Federal Farm Board. I testified at the previous hearing that I knew that money had been expended by that organization in setting up out-door advertising signs along the highways, and that, in my own particular case, I felt that the expense of that kind of advertising was prohibitive under the tariff we were using at that time.

Now, I find that in the instance of this Producers Commission Association, their business shows a substantial gain each year from 1929 on. And I attribute that to the fact that they have been able to finance different stockmen, some of whom had been patrons of my organization and who, prior to the establishment of the Producers Commission Association as a subsidiary of the National Livestock Marketing Association, had been receiving their finances, enabling them to handle livestock from other loan companies or from their country banks. This has been, as I think anyone familiar with the situation on this market would think, in large measure, responsible for the gain in volume that that company has enjoyed during the last few years.

The very condition surrounding so many livestock men in our trade territory, brought on by the distressed conditions of the times, the losses that they had occasioned through the handling of livestock, made it impossible, in many instances, for many of those men to obtain their financing of livestock operations from the sources that they had been obtaining them from in years prior to 1930, and several of them, to my personal knowledge, obtained their finances from this organization against their wishes; that is, I mean by that, they dislike very much the idea of having to go to this organization to obtain those finances but were forced to by the stress of the times and the conditions surrounding the organizations that had been financing them prior

to that year. It is not my idea to infer that it was a good thing that these men had that source from which to obtain their finances for the handling of livestock. The thing that I have always objected to is the fact that the same privilege afforded them was not afforded my own firm or the other firms on the Kansas City market. The funds supplied by the Federal Farm Board
1145 would be extended to but one cooperative selling agency, and that has, since that time, been the practice of the Federal Farm Board through the National Livestock Marketing Association.

We still have the direct buying of hogs with us, growing all the time. For the present year at the Kansas City market, the hog receipts direct to packers total 1,440,000 head, as against 1,067,071 handled through the market. There is a continuous program on the part of the packers to acquire large numbers of hogs off the market and away from competition, and basing the prices upon which they purchase these hogs on the prices established at the Kansas City market. Then there is this competition, on one side in the form of a Government subsidized cooperative, on the other side by these small markets growing up all around us, more particularly numerous in the last year or two, intercepting the flow of livestock which, before their establishment, came to the Kansas City market. All of these things have the effect of making it especially difficult to establish and maintain the kind of a volume that we would like to establish and maintain. I understand that commission firms are not eligible for loans, but that the branch agencies and the head offices are going to deal directly with the individual stockmen. I understand, however, that it is the purpose of that organization to extend credit to farmers without regard to whether or not they belong to a cooperative organization. It has been my understanding that a commission firm could not do that, but that they might organize themselves into a corporation acceptable under the law and by the putting up of sufficient capital obtain a line of credit with the intermediate credit banks. With regard to the suit that was instituted against us and which at that time had not been settled, arising out of the failure of the Minneapolis Kansas Bank, we having sold some cattle and remitting the proceeds to that bank to the credit of the shipper, the bank failed and it developed that the mortgage was held by the Kansas City bank, and the Kansas City bank brought suit against us. That suit was settled out of court at an expense to us. That case was settled out of court at an expense of $2,257.40. Two thousand dollars of that was paid to the parties who were suing us. We did not carry mortgage and theft insurance at that time but we carry it now. I

can testify now to the effect that there have been reduc-
1146 tions since that time in the drawing accounts of owners of the National Livestock Commission Company. A settlement of the account of the failure of the Minneapolis, Kansas bank was made last year, 1931. The money expended should appear in the expenses for that year. We started to carry mortgage and theft insurance in 1931. I have listed here the instances that I picked off our record yesterday morning, and I will enumerate them for the years in which they occurred. In 1930, there was a loss occasioned by our paying a draft on which the livestock failed to net the amount of the draft, and which we have been unable to collect, to the amount of $130. An item of $2,307.64 represents a draft drawn on us for the purchase of cattle in the country by an Iowa man, we carried that for several years in the hopes of collecting it, but the man has never been financially able to pay it. That has been eliminated from our books during 1930. Then there was an expense in 1930 incident to depositions in this Minneapolis, Kansas Bank failure amounting to $97.90. In 1931 we had a loss of $235.40 occasioned by our purchasing for a customer on the Sioux City, Iowa, market a load of calves which he would not receive. He gave us the order over the telephone, we called him back and described the calves we were going to buy and he told us to send them up, and when they arrived they did not measure up to his expectations; he turned the draft down and we were forced to have that load of calves sold on the Sioux City market at a loss. Other fees paid incident to the Minneapolis affair amounted to $159.50.

In 1930 we were selling a drove of cattle for a man who lives at Amarillo, Texas. The cattle had been pastured in Kansas and when the last shipment of cattle from these pastures arrived at the market we were informed by the owner that he had had a surveyor measure the pasture and found that the pastures were short several hundred acres of what the owner told him there were in the pastures. He ordered us to withhold the payment of pasturage to the pasture owner on the last shipment of cattle, and later on made demand of us to turn the money over to him. Of course, we are responsible to the pasture owner for the remittance of the pasturage, feed from the pasture coming ahead of the mortgage, and we had the pasture owner on the one side demanding us to pay him, and the owner of the cattle demanding
us to turn the money over to him. We finally turned the
1147 money over to the owner of the cattle and were indemnified against loss of that money by a gentleman on the Kansas City Stockyards. He underwrote the amount of money until such time as it would come up in the courts at 6 per cent interest.

The case was delayed in court and it was almost two years before it was settled. The amount of the interest involved was over $700, and we finally got him to agree to take $500. Our firm just paid that amount a short time ago. We asked the owner for indemnity but could not get it. We did not know what the financial condition of the owner of the cattle might be at the time the suit was decided in court, therefore we decided to safeguard the National Livestock Commission Company. We did not dream at that time that it was going to take so long in the course of adjustment. We had it underwritten rather than compelling the owner of the cattle to have it underwritten. We have had, due to the building and development of hard-surface roads throughout this territory, a great increase in the number of livestock moving by truck, and we have a great many strange faces in our office from day to day has required the use of more caution by reason of that condition than ever before in my experience. There was a time, not so many years ago, that I think I knew by name every man who patronized our organization. Now, I could not begin to keep track of them. The fact of the matter is that we have to expand our filing system, down at the office, from time to time, and buying new cabinets in order to keep listed this great number of new names that comes to us from time to time. Just recently a man came in with a load of livestock and he did not go out in the yards except once during the day. I had the cattle to sell, myself, personally. The market was mean, and I did not sell them the day he was here. Coming up into the office in the late afternoon, I told him I was going to carry them over because I thought the bid placed on them was unsatisfactory. He asked me what I was bid and I made a list of the bids on each one of this consignment of six or seven cattle, and he left for home that evening. There was a young fellow around the office with him all day and to all appearances was along with him, either as an interested neighbor or relative, and he overheard all the conversation. The next day we sold the livestock and mailed the man his check. This young fellow who was with the old man the first day followed the mail man
1148 and took the envelope out of his mail box, getting the check out of the envelope, and he came down to the office the next day, which happened to be Saturday, and there was only one office man in the office when he was there. He told him that he was the son of this man and that the old man had sent him down to get the check cashed. He was afraid of his own banks where he lived and he wanted to take a little spending money out of the proceeds, leaving the balance on deposit at one of the stockyard banks. Our office man strictly should not have endorsed the check, but he did. After the man left the office our

office man got to thinking about it and went down to the bank and he found that this fellow had gotten all the money and had skipped. We remitted to the owner another check in the amount of $214.70. That amount is still outstanding on our books and we hope to collect it.

As a result of the increase in truck transportation the checks that we have to write now-a-days in payment of these proceeds are becoming very burdensome, and the tax on checks is quite an item in the expense of the firm. In the course of a day's time we now write hundreds of checks. This increase in the remittances by check, is due to the truck-in business largely and relates mostly to small consignments in trucks. As far as the stealing of livestock and the greater number of instances where dishonesty is the main factor in the hazards of the business, due to things that result from the depression, I think it may be safely stated that in the last few years the tendency has increased. The advent of the truck has also increased it because now a man can take a truck and run a few head from someone's pasture or feedlot into the truck and go to the market in a comparatively short time and dispose of the livestock.

Bank failures put quite a hazard on the commission business. The number of banks is less now but the condition of the remaining banks is something I have no knowledge of. I think the hazard is still present.

We have made a reduction in expense incident to horse-hire in 1931 as compared to 1929. That is occasioned by the fact that we did not buy as many cattle in 1931 as we did in 1929. There was some reduction made in the amount of barn rent since 1929. We own four horses at the present time. In 1931 we owned three. We usually rent two or three horses for salesmen. We have shared in a saving by reason of the reduction in expenses due to lower rentals on horses. We have made some saving —

1149 1931 as against 1929 in our telephone expense. I do not know of any particular cause for it except that the men who use long-distance phone have been thoroughly impressed with the necessity of confining their conversation within the three-minute period. Our long-distance toll bill is the main item of that expense. I do not recall offhand any expense that we have been able to eliminate in 1932 as compared with 1929 or 1931. I do not have a comparison of the expenses for the nine months period. It would be difficult for me to say how much more or how much higher any particular item of expense would be. We have not had any reduction in rent or light or heat. I do not know of any reductions that have been made at the market in which we have participated as far as those certain fixed charges are concerned.

MR. GEORGE G. CROSSAM, called by the Government, after being sworn, testified as follows:

DIRECT EXAMINATION

I testified in a former hearing and stated that I was manager of the clearing house maintained by the Kansas City Livestock Exchange. I have remained in that position since the former hearing.

Within the last week or so I have read the testimony which I gave at the former hearing. There is only one thing that I noticed in my testimony, and that is that I have handled more items. I has seemed to me that the livestock had sold in smaller lots and has necessitated more bills. With this exception, my description of the clearing house as given at that time is applicable now.

MR. JAMES R. HENDERSON, a witness called by the Government, after being sworn testified as follows:

I testified in the former hearing beginning on December 18 and continuing on December 19. I read practically all of the important points of my testimony. I am still connected with the Moffett Livestock Commission Company. I would not suggest any change in the matter in that testimony, but I do not believe the testimony as recorded reflects the true condition
P150 as it now exists, or existed in 1929. The general economic conditions of the country and the financial conditions have been such as to make it very hard for cattlemen to carry on as they did in former times. In 1929 a man could hold his cattle without sacrificing them to care for his financial troubles, but it seems to me that since 1929 farmers and stockmen have had to market their cattle piecemeal, selling a calf or a hog, to raise a little money to pay taxes. All this tends to increase the expense of handling the business, not only for the shippers of livestock but for the commission firms. I had an analysis made of our business for two months in 1929 and for the corresponding two months in 1931. Our truck-in business increased 150%; our car-lot business fell off. Our volume of business was less in 1931 than it was in 1929. It was not a large decrease, but the increase in the drive-in and truck-in business had to come off the car-lot business, which is easy to handle. The 150% increase in truck business over two years ago means a lot of extra work and expense in connection with the handling of it. Formerly we paid 10¢ a head for bringing cattle from the drive-in gate to our pens when we were getting a small volume of business; but as the business increased rivalry sprang up among these men for business, and they volun-

tarily reduced their price to 5¢ per head about a year ago. I am not sure, however, but what — were paying 10¢ a head up to as late as the first part of 1932. I do not recall just when the change was made, but at present we are paying 5¢ a head for delivery. The 5¢ per head would have been in effect probably all of 1931 and up to the present time. Hogs were 5¢ a head straight but about six months ago our man that delivers our hogs voluntarily reduced it to 4¢ per head up to 40 head, and 2¢ per head above that amount. That is the rate for our company in effect at the present time.

Our firm is now a partnership composed of four partners, namely, H. M. Baker, W. C. Bradshaw, B. A. Metz, and Mrs. Thomas S. Moffett. This represents a change in membership, the change beginning January 1, 1932. Prior to that time we had two partners. There has been no other change in personnel except that we employ extra help occasionally. This change in organization resulted from our taking in our steer salesman and our butcher salesman, and Mrs. Moffett upon the death of her husband, Mr. Thomas S. Moffett. Mr. Bradshaw is our steer salesman. He was formerly with the Witherspoon firm.

1151 Mr. Metz is our butcher salesman, who was formerly with Elliott-Swain & Company. Mr. Metz had been with our firm about six years before he was taken in as a partner; and Mr. Bradshaw about one year. Mr. Bradshaw came to our firm directly from the Witherspoon firm. Both Mr. Bradshaw and Mr. Metz were with our firm as employees during the entire year 1931.

I have charge of the office management. There has been no change in salary scale of employees of our firm since December 31, 1931. I think the salaries are all the same as they were at the time the former audit was made for the year 1929. The firm has made no salary reductions because reductions were made when the men were hired years ago. Our firm has made no change in its advertising or business-getting policies since my previous testimony. We have carried our solicitation in the country a little further and more intensive than we were doing in 1929. The occasion for that is to keep up our volume of business. We have to go out and see these customers in order to compete with other markets. This is on account of shipments of car-lot stuff. We are closely related to the St. Joseph and Omaha markets. They have men in our territory all the time trying to divert our trade territory business into their channels, and it is necessary to keep solicitors out and work this territory to hold our business, and it necessarily costs us more money than it was costing in 1929. Our solicitation is all done by our regular salesmen. We have no regular hired solicitor. Our salesmen go out perhaps

the last two or three days of the week ends. That is the only soliciting that we do. That condition prevailed in the year 1931 and has always prevailed more or less, but as conditions change and business falls off, greater efforts are made to retain it, and necessarily it entails more solicitation and added expense to hold it.

CROSS-EXAMINATION

Beginning a few months ago an excise tax was placed on telephone and telegraph communications. Our telephone bills for the year 1931 amounted to $683.25, according to the Government audit. This amount includes nothing on account of Federal tax. The establishment of the excise tax in 1932 increased our expense quite materially. Our checks are increasing every
1152 month in volume, and our Federal tax during the month of August was about $10 on checks. I think our check will average about $10 per month.

I personally prepared our annual report to the Packers and Stockyards Administration from the books of our company. In 1929 our total commissions amounted to $31,276, in 1930 to $25,985, and in 1931 to $25,769. The same schedule of rates prevailed in 1929, 1930, and 1931. The only thing that would account for a reduction in the total revenue was the decline in the volume of business.

I personally had nothing to do with the filing of the new schedule of rates which went into effect in May, 1932, reducing the commission rates. I do not know whether Mr. Baker had anything to do with it. I do not know that any member of our firm had anything to do with it, only I guess it was approved in open meeting by the exchange. I was not present. I believe, however, I did hear Mr. Bradshaw state that he had something to do with the formulating of those rates, that is in a general way, by giving such information as he could, but I am not positive as to that.

We have in our office copies of the annual reports submitted to the Packers and Stockyards Administration. We have also a printed copy of the motion for rehearing that was filed on behalf of our firm. According to our report for the year 1931, the total gross proceeds, represented on our account sales and account purchases in money, were $1,870,585.09. Of this amount $1,622,114.69 was represented by livestock sold and $185,470.40 by livestock bought.

REDIRECT EXAMINATION

There has been some decrease in the price we pay for stationery and supplies since 1929, but I do not believe there has been any

decrease in the lithography work and printing. When Mr. Metz and Mr. Bradshaw were taken into the partnership on the first of January, 1932, they each put in capital equal to 28% of $3,000. The bank balance mentioned by me as of a certain date does not include proceeds to shippers. All proceeds had been sent out on the last day of the month. I think I mentioned the month of September. I think I mentioned a balance of two thousand dollars and something. We handle our shippers' proceeds through the same account in which the firm's capital is.

Up to the present year Mrs. Moffett devoted more time to her ranches. They are gradually getting their estates
1153 closed up, and she has managers on the ranches so that she devotes more time now to the commission business than she did. She is assigned to no particular duty but assists in any way she is asked to and is very helpful about driving our salesmen out. She has her own car and she drives them out into the territory of her ranches and assists in soliciting. She solicits business personally also. Most of her solicitation has been among those customers with whom she was acquainted. She does not hesitate, however, to solicit anywhere or at any time or place. She is quite active and a good business woman. She is in the office every day and in and out of the office. She puts in more hours than anybody in the firm, arriving early in the morning and remaining late at night. She has had a great deal of business in connection with these estates that has kept her there all the time, and she is always ready to help in our office if we need her. She is assisting in there today while I am away. The commission office has nothing to do in any way in connection with her ranch affairs. I do not help her in any way in connection with the accounting or keeping of the records.

REDIRECT EXAMINATION

I had nothing to do with the formulation of the tariff.

RECROSS-EXAMINATION

My firm furnished the committee which worked on this schedule a lot of data.

REDIRECT EXAMINATION

The committee to which I refer was made up of the Board of Directors and the Secretary, who handled those matters. I made no personal appearance. I simply furnished such information as they asked off the records.

RECROSS-EXAMINATION

Personally I do not know how the committee was constituted or anything about it.

MR. E. W. ELLIOTT, a witness called by the Government, after having been sworn, testified as follows:

DIRECT EXAMINATION

I am the same Edward W. Elliott who testified in the former hearing. I am still a member of the firm of Elliott-
1154 Swain & Company and sell hogs for that firm. I have been a member of the firm and have been selling its hogs since the former hearing. I have read the testimony given at the former hearing. I know of no change as pertains to the general conduct of the business. The methods employed in the hog yards are identical with what they were when I last testified. I have no statements to make in addition to the testimony formerly given, further than what has been taken care of in the way of reductions in our rates on hogs. I have reference to Tariff No. 3, filed last spring by the members of the Kansas City Livestock Exchange.

We have not been able to reduce office rents. We seldom use a horse. We have not been able to reduce our force in 1932 as compared with 1931. We have the same number of employees that we had last year. During 1931 we made no reduction in the number of employees. We did make a deduction in one man's salary. In 1931 he received $1,250 but beginning January 1, 1932, he was reduced $35 a month. That is the only salary reduction that has taken place between 1929 and 1932. None of our expenses in 1932 have increased over what they were in 1931, except the minor increase in postage. Our postage amounts to $125 a year. In 1931 it amounted to $98.76. Our check tax will probably cost our firm $150 in 1932.

CROSS-EXAMINATION

I am president of the Kansas City Livestock Exchange. I was a director in 1929. There has been a diminution of receipts of livestock at Kansas City since that time. I have examined the figures set forth in Section II on page 6 of the motion as to diminution in gross commissions and in the number of livestock handled during the years 1930 and 1931 as compared with 1929. Those figures are in accord substantially with the diminution in the volume of livestock we handled. The audits of our business

made by the Government for the year 1929 and the year 1931 show that the two owners, Mr. Swain and myself, received as a division of profits for our services rendered in the business $8,066.29 and $6,886.31. These amounts include the compensation for actual work in the business by both myself and Mr. Swain. The reduction in the amount is due to a falling off in business.

In the meantime I tried to keep our expenses at the lowest
1155 possible minima. We have made no expenditures at any time which we did not honestly believe were necessary and proper. It has been our policy for a long time to do as little country soliciting as possible, and we are continuing that policy. I have seen during this period a more intensive competition develop at the market. This has been due in part to the activity of the Producers Commission Association and the other cooperative at the market. It has been due in part to the activity of packers slaughtering hogs, particularly in Kansas City, in obtaining their receipts direct from the truck drivers or railroads who deliver hogs here. I have observed an increase since 1929 in the volume of direct buying. I understand it to be a fact that the larger portion of the hogs now slaughtered at Kansas City are procured by packers outside the Kansas City Stock Yards. All this has had its effect upon the volume of our business.

We do not engage in the loan business. I understand it to be a fact that many of the firms that have done a loan business in connection with their commission business have sustained losses in connection with these loans in the last few years.

During the last few years there have been changes in the price relationships as between cattle, hogs, and sheep that affect hogs adversely. Hogs have been selling at prices disproportionately low, about $2 a hundred in my judgment. This price relationship between the species had an effect upon me in connection with the formulation of the new schedule of rates filed, and under which we are now operating. The substantial reduction made in the commission charges for hogs was due to the extremely low prices of hogs on foot. In keeping with the trend of the times and due to the extremely low prices of hogs, the reduction was made. The reduction in hog commissions was greater than those on other species of livestock. In addition, the reduction was prompted by the competitive condition surrounding the hog commission end of the business. This new tariff was formulated by a committee of the respondents who made studies of its application. It was formulated by this committee in consultation with the attorney for the respondents. I had nothing to do with the study made as to the cattle rates, or as to the sheep rates. I am particularly concerned with the hog

rates, in so far as the tariff is concerned, rather than its
1156 application after it was put into effect. I have had no difficulty in applying this tariff to the consignments of hogs handled by us. It is a simpler tariff than the one it succeeded, for the reason that it is a per-head progressive rate. It contains no prorating charges. It provides a different rate on hogs averaging 130 pounds or less per draft from that which applies to hogs averaging over 130 pounds per head on the consignment basis. The purpose of this provision was to permit the per-head progressive rate to apply to lighter hogs often received, from 100 to 140 or 150 head per car. Hogs weighing less than 130 pounds per head in a consignment are usually stockers and feeders, for which there is a market at Kansas City.

In the audit there is nothing shown for automobile expenses, and only $2.60 for traveling expenses. The reason for this is that the one who goes makes no account of it, except in the case of an exceedingly long trip.

I consider the expenditures that our firm makes in the way of payment of assessments and dues to the Kansas City Livestock Exchange are soliciting expenses, or business getting and maintaining expenses, because they go to maintaining an organization that will draw business to the market. In the same sense I mean that the maintenance of the Exchange Building and all the market facilities provides for business, but in so far as the getting of business for our particular firm is concerned as distinguished from the other firms at the market, these expenses do not constitute a soliciting expense. As president of the Exchange I know of no Exchange activities directed toward the procurement of business for any particular firm or organization. In radio broadcasting no reference is made to any particular firm. In my judgment, the Livestock Exchange is a part of the market, essential to its operation.

Our bank balance at the first of 1931 was $3,700. We find the need of that much cash or its equivalent in the operation of business as it has been running. The Government cost study for the purpose of determining capital for our firm indicates $1,500.

Our business has developed very largely into a drive-in business. Within the last year or two there has been more activity in the solicitation of this drive-in business by other firms.
1157 Solicitation is effective in many instances in getting additional volume. This has been illustrated in the case of other firms who are competitors at the market. Our firm bought or sold livestock during the year 1931 amounting to $772,168.09 in gross receipts. I do not consider that the cash capital of $3,600 or $3,700 used in our business during that year excessive in the

light of the business we did. I think it a reasonable and necessary amount and that it would be quite emba'rassing to have less.

A large percentage of our hogs, 90% perhaps, arrive by truck. We have a man who gets to the stockyards about 4:30 or 5 o'clock in the morning. He moves hogs from the truck receiving dock to the sale yard, a distance of from a quarter to a half mile. At 8 o'clock the market opens. The order buyers precede the packer buyers. We sell all the hogs we can to order buyers. Later the packers come into the market and buy the remainder. I do all the selling up to noon and shortly thereafter and then go to the office. My assistant sells whatever arrives after that hour. On busy days he occasionally assists me in making sales during the busy period of the day. We have one yardman. The other hog yardman listed is an individual who works collectively for other firms and moves our hogs arriving by truck to our locations. He is paid so much per car. There has been no reduction this year in the amount we pay him. He receives 50¢ a car. Our yardman, as a rule, sells the hogs that come in and are sold after 12 o'clock. Under present arrangements it takes two men to sell the hogs. The yardman helps in the selling and I help in the sorting. I weigh a large percentage of the hogs, due to the fact that it is necessary up to noon, especially during the cool weather, to keep a man at this receiving dock for truck hogs. We have no identical market any two days or through a market period of any one day. I recall an instance where I sold 35 cars of hogs in one hour. I can cite many instances where I worked on one car of hogs until afternoon. At the time you could dispose of hogs in the manner previously stated, circumstances were different from those that prevail at this time. Then we had no sorting to do, no grading whatever. All classes of hogs sold as a unit as they arrived, except that some emaciated hog considered unfit for food might be thrown out. Nowadays a car of hogs, and sometimes a truck of hogs, is graded into many differ-
1158 ent grades. Market conditions are different from what they used to be. Years ago the buyers in the yard told the packing house how many hogs they were going to buy that day. Now the packers hold the buyers down to numbers, and the buyers sometimes refuse to buy as small a truck load as four or five after they have their order filled. The hog market is over by noon on most any day. It is about a four-hour market. Considering a day as eight hours, the selling would occupy about one half of the time. The rest of a salesman's time is devoted to such office work as he may be able to do—correspondence and work of that character.

If a salesman happens to be also an owner of the business, some of the responsibility of the general exchange matters in the

ordinary course of events will fall to him. It is the owners of the business who primarily take interest in and give their time to and their responsibility for the continuity of the exchange organization. The directors of the exchange and the president receive no financial or monetary compensation. Their services are necessary work for a clean-cut market.

REDIRECT EXAMINATION

The diminution in volume of business is a general condition of the market. It is more applicable to other firms than to ours because our business is of a local nature and is not affected so much as that of the other market agencies, in so far as hogs are concerned. Our cattle business is of a local nature but is not affected to the extent that other market agencies are in respect to receipts. My remarks to the effect that direct buying by packers is on the increase is on the basis of information gained from the general market talk. My statement with respect to losses of some firms on their loan business was also based upon general market talk.

I became president of the Exchange in June 1932. This was after Tariff No. 3 went into effect. In formulating that tariff, there was what was known as a rate committee composed of four or five members of the Exchange. This committee, at the suggestion of Mr. Gage, requested that I select a committee from the hog department and formulate a rate that would be in keeping with the trend of the times, taking into account the exceed-
1159 ingly low price of hogs on foot. This subcommittee formulated a rate and reported it to the rate committee. I was chairman of this subcommittee. The rate committee did not submit the schedule of rates to a meeting of the members of the Exchange, and then each firm which is a member of the Exchange put it into effect as a matter of course. Those of us who acted on the subcommittee recommended rates representing a greater per cent. of reduction in hog rates than other committees recommended with respect to other species. Our purpose was twofold: we wanted to meet competition; we took into consideration the low prices prevailing for hogs at that time. Hogs were selling at around 3¢ a pound and had dropped more than prices on other species of livestock. The prices for hogs are still disproportionately lower than the prices of other species.

I have observed the effect of the lower rates in an instance or two. These instances were of string shipments, that is a number of cars belonging to one man.

The activities of the Exchange are for the benefit of all Exchange members. No activities of the Exchange are directed to the particular benefit of any one member as opposed to others.

The Exchange is trying to improve the volume of business of all of its members. It is for that reason that the market is kept well policed at all times.

In my opinion, there is as much soliciting done with truck drivers as with owners of livestock, and this solicitation is done largely in the yard. This often has a considerable effect upon the matter of the firm to whom the hogs will be consigned to sell. I have heard of instances where the truck driver was asked advice with respect to whom to consign hogs. I know of no instances where the truck driver is given blanket information to deliver hogs to whatever firm he thinks best. This solicitation of truck drivers has for its object the getting of the truck driver to recommend a certain firm. This method of solicitation is not generally approved on the market. I know of no instances where this solicitation of truck drivers takes the form of recommending particular firms. I sell the hogs consigned to Elliott-Swain & Company. I am assisted by a hog yardman. The great bulk of hogs are sold by noon. I then go to the office, leaving the hog yardman to sell what few come in after that time. He will usually have a regular hog salesman look over the hogs
and give him the market value on them before showing
1160 them, as he has been off the market a large part of the
day. Another salesman renders him a neighborly service. There are occasions on which we might have a fairly heavy run until after 12 o'clock. In that case I remain in the yards. I make it my business to sell the hogs when there is any considerable volume of hogs to be sold. When I get to the office I look after correspondence with patrons and matters of this kind. I assist in the management of the business. There is only one man in the yard selling hogs for the firm at any time. As set out in my former testimony, I believe we all have our limitations as regarding salesmanship in any species of livestock. What that is, I have never been able to ascertain. I am not prepared to say how many hogs I would have to have in order to acquire another salesman. Our business has never had any very great volume. I have found that I often become incapacitated in four or five cars of hogs or 200 or 300 truck-in hogs. The following day I might be able to dispose of twice as many hogs with greater ease. One can go into the yards and dispose of an unlimited amount of hogs by taking just a little concession, not noticeable to one unfamiliar with the market. I could sell them as fast as I got them, but in my judgment I would not be rendering efficient salesmanship.

As already stated, we hire a man to deliver our hogs from the railroad chutes to our pens. The rate we pay him now is the same as it was in 1931. I do not think we had this service in

1929 but, speaking from memory, I would say that the service was used in the yards in 1929. My recollection is that the charge for this service was higher in the cattle yards than it was in the hog yards. I do not remember the exact charges.

RECROSS EXAMINATION

I have stated that there were days on the market when it would be next to impossible for any number of men to sell the hogs consigned to our firm and sell them efficiently, that is, get the full market price. We can always sell hogs or other livestock quickly in the yards and with comparative dispatch if we are willing to take less than the market price for them. A comparison of the time involved has to take the matter of efficiency of the sale into consideration primarily. If I should
1161 receive 15 cars of hogs some morning, and in those consignments I should have hogs suitable for Feaman & Nolen, or Corrigan & Soeder, or Rice Order Buying Company, I would, while trading with one of these order buyers, lose contact with the others. In that case I should be left with that class of hogs for a later market and would have to sell to the packers. Since the packers have been receiving so many hogs direct, a sale to them under the conditions outlined would, in my judgment, be about 10¢ per hundred lower. There are other firms, competitors of mine, which have entered business since I did and who have, by stressing solicitation, built up their drive-in hog business to a relatively large volume. I do not believe that such firms have any advantage over me in actual selling efficiency.

REDIRECT EXAMINATION

A seller's market nowadays is a rare occasion. I have frequently seen the market open exceedingly active and higher. Thirty minutes afterwards you could not sell a hog within 15¢ or 25¢ a cwt. of what they would readily move for. There are times when an active market extends over a period of days. During the war period we had such markets. Under present conditions wo do not have. There are days when it is a buyer's market, and the prices offered are less than we consider the real value of the hogs. We work until late in the day trying to get what we consider to be the true value of the hogs. If we are not successful in getting bids at a figure we think advantageous to our patrons, we hold the hogs over until the next day. If we think the prospects of the next day are no better or worse, we necessarily have to let them go at what we can get for them.

Our firm has never sold hogs for any other firm on the market at a split commission basis. I frequently sell hogs for other firms, but it is a matter of accommodation because its regular salesman may be out of the city, or, for some other reason, removed from the market. I make no charge for the accommodation. Firms thus accommodated reciprocate by rendering us the same service.

RECROSS EXAMINATION

Some of the duties of the management of the firm of
1162 Elliott-Swain & Company rest upon me. Prior to 1920 I was a member of another commission firm, in a partnership with Mr. Lennon, formerly a president of the Exchange. I have been active in the livestock commission business at Kansas City as owner or part owner of a business for 34 years. I have been connected in one way or another with the directorate of the Livestock Exchange for possibly 25 years. So far as I know, I have given general satisfaction to the greater per cent. of my customers. I have customers who have remained such over a period of years. I was in business prior to the organization of either the Farmers Union Commission Company or the Producers Commission Association at the Kansas City Stockyards. On the basis of my experience, I do not believe that the net return to the owner of a commission business is commensurate with what it has been in times past. Present conditions in my judgment, are not conducive to getting young men of ability to serve the apprenticeship in the business necessary to take the places of men who have long been engaged in it.

Since 1929 there has been an increasing tendency to a decentralization of the selling of livestock. It is my personal opinion that the establishment of small stockyards in the trade territory of the Kansas City market, such as those recently established at Springfield, Joplin, and Sedalia, Mo., and Parsons, Kans., is a detriment to the interests of the producing public. The establishment of these markets affect the volume of receipts at Kansas City and tends to increase the cost of operation here. I see no factors coming into the situation which would tend to relieve the decrease in volume or to cause an increase in it. It is probable that the relative shortage of the corn crop in Kansas will affect next year's supplies at Kansas City as compared with those of other markets.

REDIRECT EXAMINATION

I know of no business in which the rewards of work are as good now as they have been in the past periods since the World

War. We are in a general depression in which the diminution of incomes and salaries is becoming almost universal. I do not think that, even in spite of so much unemployment and the difficulty of getting jobs, it would be easier to get men of ability to go into the commission business than it was up to 1929.

1163 The reason for this is that they will come and talk with men like myself and others. We know the experiences we are having and we discourage them. If I had a son, I would not encourage him to take up the livestock industry at any stockyard. I might encourage him to become a producer. I regard the diminished volume of livestock receipts at the stockyards as a more or less permanent condition.

In respect to hogs, there has been a substantial decrease in the personnel employed in the yards in yarding and selling hogs since this diminution in volume started. I cannot give an estimate as to the decrease in personnel since 1929. The hog end of the business at the stockyards is being maintained at this time for no other purpose than to maintain an open competitive market in an endeavor to hold prices up and keep them wholly out of the hands of the packers. Some of the firms have reached such a low point in hog receipts that they cannot make a paying business of it. No matter how few hogs we have to sell, we have to have a salesman to sell them. There is a point below which one cannot afford to maintain a salesman to sell hogs, and that is the thought we had in mind when we put in this new rate. It is my understanding that there is a corn shortage in Kansas this year. My statement was that if there is a corn shortage in Kansas, that would affect the supply of hogs coming to Kansas City. I do not know whether there is a shortage or not.

RECROSS-EXAMINATION

The general level of commission charges observed at Kansas City has at no time within the last 20 years gone up or down with the prices of livestock. Tariff No. 2 was established about the close of an era of depression and continued in effect unchanged until a few months ago. The factors influencing us there at the yards, so far as rates are concerned, have been the increase in tonnage of cars and mode of arrival. Many different units arrive by truck and entail additional expense. This was the reason for any increase over any former rates we might have had. When I came to the yards 38 years ago, we were selling hogs for $6 a car and received eight, nine, or ten thousand pounds in a car. There were no sorting and no yard help,

since the stockyard company yarded them, fed them, watered them, and took them to the scales and weighed them.
1164 Since that time the capacity of cars has increased. There are additional sorting, manipulating, and additional expense, as well as the burden of delivering the hogs from the cars to the pens, and from the pens over the scale. An entirely different condition now confronts a selling agency.

We have had an experience or two in which two 36-foot cars have been sent in as one carload on a single 40-foot car billing. The new rate takes care of a situation of that kind, inasmuch as it applies to the actual consist of the car. With respect to the 10,000 pound minimum, a car of 15 head averaging over 800 pounds would be sold at the 70¢ rate, and the commission would be $10.50. This amount is substantially below what the charge for this consignment would have been under the former rate, namely $15. If you receive a single consignment of 60 hogs, the commission would be 25¢ a head on the first 40, or $10 and 10¢ a head on the remainder, which would be $2. The sum of the two, or $12 represents the commissions on the car. If the same man had another car containing 60 head, all the hogs in this car would be sold at 10¢ each, or $6. The total commission on the two cars would be $18. If a car had only 10 hogs in it, the commission would be only $2.50. If it had 20 hogs in it, it would be $5. The commission on 50 200-pound hogs, or 10,000 pounds, would be $11—40 hogs at 25¢ and 10 hogs at 10¢. Under the former tariff, the commission would have been $13.50. As the number of head in the car decreased below 50, the minimum would decrease under the present tariff; whereas, under the old tariff, it would have remained constant at the minimum.

Since I have been in the yards, the actual loading weights of cars have shown greater variation, and the car as a unit has become a more variable one upon which to apply a rate. In connection with the formulation of the new tariff, I found that there had been differences in the application of the old tariff as it applied to carload consignments of hogs numbering 40 and above. I stated that the commission on 50 head of hogs under the old tariff would have been $13.50. We discovered a clause in the old tariff which was construed by some firms as limiting the charge on the 50 hogs to $12, which was the same charge as was provided for 40 head. Under the old tariff, 10 head of hogs in such a consignment were sold free of charge. Under the present tariff the gross charge in-
1165 crease', but after you pass the 40-head mark, the average charge per head decreases. There is no point in the sched-

ule as to hogs where the average charge per head increases with an increased number to the consignment.

REDIRECT EXAMINATION

In Tariff No. 3 no distinction is made in the commission rates charged on hogs on account of mode of arrival. This is in recognition of the fact that it is the size of the consignment that influences expenses. Small consignments are expensive to handle, regardless of how they come. Five hundred hogs coming in large consignments in full carloads would not be as expensive to handle as 500 exactly similar hogs coming in in lots of 10 and 20. A 40-foot car could contain 100 hogs as a load. I have never had an experience where I had to charge for selling two 36-foot cars of hogs; only the commissions for selling one car of hogs. I have never had an experience with the hog schedule in Tariff No. 3 in which commissions for selling a larger number of 130 pound hogs, or hogs weighing over 130 pounds, would be less than the rate for selling a smaller number. In tariffs that have a minimum in them, such a situation could arise. In my opinion no tariff could be compiled that did not have some inequalities in it. When you have a carload minimum, 10 hogs in a car, and only 10, would carry the carload minimum. In such a case the commissions for selling the 10 arriving in a car might be higher than the commission for selling 20 coming by truck.

RECROSS-EXAMINATION

Under the old form of tariff as construed by some agencies, the rate on truck and rail hogs was the same up to 40 head. Under the old tariff as we interpreted it, there was no charge for additional head between 40 and 50 truck hogs. We sold 49 hogs for the same commission regardless of whether they came by truck or rail as we sold 40 head for; and that extends until you reach the limit of carload in numbers. Then we started over again, and if there were two cars in the consignment, the commissions were reassessed on the original basis, each car being a unit. On the second car, the first 40 head would again pay 30¢ per head instead of 10¢, as per our commission rates of today. Under the present schedule, the second carload
1166 of hogs would all carry the rate of 10¢ per head; whereas, under the old rate, the second carload up to 40 head would carry a commission charge of 30¢ per head.

Whereupon the witness, Mr. Elliott, was excused.

Mr. M. Y. Griffin, a witness called by the Government, after being sworn testified as follows:

DIRECT EXAMINATION

I am the same M. Y. Griffin who testified previously in this case; was then and am now in charge of the local office of the Bureau of Agricultural Economics. No changes of a specific nature have taken place since my former testimony. There are some changes in our broadcasting schedule and some additions to the work but these are of minor important. The broadcasting program division has been transferred from station KMBC to station WHB and the hours of release have been changed. We have three releases from station WHB, one at 7 in the morning, the next at 11:30, and our next at 12:57. The substance of the releases is practically the same. It has been necessary to make some reductions due to the curtailed time that we have on the station. Since the time of my former testimony we have gathered some retail prices which are forwarded to our Washington office and released in connection with prices at Chicago and New York. We do not release information from our local offices. We have added on meat grader. We now have two graders, one of whom is occupied almost entirely by inspecting and grading of meat and meat food products purchased by other Government bureaus or divisions, such as the Veterans Bureau and the National Soldiers Home, and the other whose time is taken up in grading meat officially for packers or retailers who desire the Government grades, choice, prime, good. The carcasses are stamped with the official Government grades. In other respects my testimony at the previous hearing reflects the condition as of the present time.

CROSS-EXAMINATION

So far as we are concerned here we haven't made any attempt to explain the reason why cattle are now selling at
1167 the 1913 level, the price of sirloin steak has gone up from 24 cents or 25 cents a pound in August 1913 to 34 cents and 35 cents in August 1932. The retail prices of beef are lower in Kansas City than they are in New York and about the same as they are in Chicago for corresponding cuts. The price figures gathered at the different markets are put out by Mr. C. V. Whalen of the Department. We gather our price statistics here in Kansas City from 15 to 30 retail stores. The figures are collected twice a month.

MR. LAURENCE G. TRICKETT, a witness called by the Government, after having been sworn, testified as follows:

DIRECT EXAMINATION

I am the same Laurence G. Trickett who testified at the former hearing in this case. I am still Secretary-Treasurer of the Kansas City stockyards and have held that position continuously since my former testimony.

There has been a material increase in the total amount of business received on our yards by truck and a decrease in the business handled by rail. All these firms take an active part in soliciting truck-in business.

In the former hearing I called attention in a general way to the difference in the method of marketing or the increase in direct receipts and the decrease in rail receipts. At that time I stated that volume of business by truck is far more expensive to handle on the part of the stockyard company and the commission firms than the business received by rail. The main factor affecting the cost to the commission firms and to the stockyard company is the small consignment, that is, the small number of head for each consignment. To receive 3, 4, or 5 head of livestock from one shipper by truck is an every day occurrence. In former times one would see from 1 to 10 or 15 cars of cattle by rail. Just as much time and effort and work are required in handling the small number of head, 5 head, as is required in handling the large number of head. Usually there is just as much time required of the commission men to sell 5 head as there would be to sell a large shipment by rail. In the handling of the small lots it is necessary to keep the ownership separated, it requires
1168 just as much man power and labor to handle 5 head as it would to handle the larger number of head. So far as the stockyard is concerned there is an additional expense always in weighing. It cost as much to weigh the 5 head as it would to run the larger number over the scales. It cost the stockyards just as much to operate the scales when weighing a few animals as it does to weight a platform load. Fixed charges are the same. It requires the same amount of man power, it takes as much time to put on and take off a small number of animals as it does the larger.

My statement with respect to commission men is based solely on observation. I am not a commission man.

There has been an increase in competition among the operators on central markets within the Kansas City territory. There has been more concentrated solicitation on the firms operating at Kansas City than on the part of firms operating at other than

Kansas City. There has been a material increase in direct buying not only in hogs but also in cattle. This competition affects all open markets. Livestock is flowing through channels of direct sales and goes around the open markets. Those two factors have increased materially since the last hearing in 1929. There has been direct buying of cattle in what is known as the Kansas City economic area including Kansas City, Kansas, North Kansas City and outlying suburban districts. Most of the direct buying of cattle takes place on the Morris and Prospect feed yards. This has developed since 1929. The Morrell Packing Company at Topeka, Kansas, formerly the Wolff Packing Company, is buying direct practically all of the livestock it slaughters. The hogs bought direct by Swift & Company pass through the Kansas City stockyards. The stockyard company handles very few direct cattle or direct sheep through its yards. Another factor of competition which has sprung up recently is the so-called small stockyards or concentration points located on various railroads. Examples of this are to be found at Sedalia, Springfield, Joplin, Atchison, Parsons. These small concentration yards have taken away from the open market quite an amount of livestock that would come by rail or truck to the open market. I should say that a large percentage of the livestock concentrated at these yards would come direct to the packers.

A change has taken place with respect to the through billing of livestock. This change is due to a decision by the
1169 Interstate Commerce Commission in Docket No. 17000.

Prior to that ruling the Kansas City market, as well as all markets, had the privilege of through billing and change of ownership. Since that ruling the Kansas City market does not have the privilege, but this privilege does exist at the so-called feed yards so that livestock stopped at Prospect or Morris enjoys the privilege of change of ownership and destination while that sold on the Kansas City market does not enjoy this privilege. This naturally decreases the volume of business on the Kansas City market and affects the price of livestock to the producer. In my judgment this is very detrimental to the livestock industry as a whole because it materially affects order buyers.

"Q. Does that affect all species of livestock?

"A. I think it does, but I think it maybe is being used in what is known as cattle at the present time.

"Q. Are all species of livestock fed at the Prospect and Morris yards, or only cattle?

"A. Only cattle.

"Q. I say, are they for all species or just the cattle?

"A. I guess so; I know they feed sheep, and I know they feed some hogs."

Since 1929 there has been a reduction in the charges made by the stockyard company to the commission men for the hire of horses. On April 6, 1932, our charges for horse hire were reduced from $30.00 a month to $27.50 per month. Our charges for feed for horses owned by outsiders and housed in our company barn were at the same time reduced from $22.50 a month to $20.00 a month. The daily horse hire was at the same time reduced from $2.00 a day to $1.75 a day. There has been no reduction in other charges made by the stockyard company to the commission men. There has been a reduction in feed charges to shippers of livestock since 1929. We have no plans for any further reduction in charges made to commission men.

Government Exhibit No. 108–J

Government offered in evidence Government Exhibit 108–J, being the 61st annual livestock report for the year ending December 31, 1931, of the Kansas City stockyard.

1170 Government Exhibit 113–E

Government offered in evidence Government Exhibit 113–E, which consisted of mimeographed sheets showing the receipts by months, by firms, of market agencies and others during the year 1930 at the Kansas City stockyard.

Government Exhibit 113–F

Government offered in evidence Government Exhibit 113–F, showing the same information for the year 1931 as is shown for 1930 in Exhibit 113–E.

Government Exhibit 113–G

Government offered in evidence Government Exhibit 113–G showing the same information by months from January to August 1932, as is shown for the years 1930 and 1931 in the exhibits mentioned above.

Government Exhibit 108–K

Government offered in evidence Government Exhibit 108–K, which was a monthly statement of the receipts of shipments of livestock at the Kansas City stockyards for months from January to September, 1932, comparative with corresponding months for the year 1931, compiled from the records of the Kansas City Stock Yards Company by Witness Trickett. The receipts shown

include livestock sold on the yards, through shipments, and direct shipments.

CROSS-EXAMINATION

The receipts of various species of livestock for the years 1922 and 1931 are as follows:

	1922	1931
Cattle	2,443,449	1,665,445
Calves	539,595	292,219
Hogs	2,654,959	1,336,594
Sheep	1,574,217	2,244,011

There has been a diminution of receipts as between 1922 and 1931 in all species except sheep. As compared with the year 1922 all subsequent years except the year 1923 and 1924 show material decreases in all species except sheep. As to cattle, 1171 calves and hogs, there has been a progressive decline in the number of head received since the year 1924. Our company has conducted its operations on the basis of a continually diminishing volume of receipts in these species during the period between 1924 and up to the present time. Our unit cost of operation has increased materially. It is impossible to readjust overhead. About the only expense within the control of the company is the labor cost. During this period the yardage charge on sheep has been 8¢ per head, the yardage charge on hogs 12¢ per head, the yardage charge on cattle 35¢ per head. These charges have remained unchanged throughout the period I have mentioned. The increased revenues incident to the increased number of sheep received do not offset in any substantial degree the loss of revenue collected on the decreased number of cattle, calves, and hogs. The greater portion of our revenue derives from charges on cattle, calves, and hogs. The commission firms operating on the market have had difficulty also in adjusting themselves to this constantly dimin'shing total volume of livestock receipts. In my judgment one of the biggest hazards in conducting both the stockyards and the commission business is a requirement to have facilities and personnel to meet the peak volume of business. The stockyard company and the commission men must have the men and facilities on hand, if the volume does not come in there is no way to govern cost. There is no way to ascertain beforehand just how many receipts of any species will come in to a commission firm or to the stockyards. The fact that the Kansas City market is a large stocker and feeder market accentuates the peak receipts in the fall. The fact that the Kansas City market is a larger stocker and feeder market accounts for a greater variation from its normal than exists at other markets such as Chicago. This increases operating costs.

The market agencies and the stockyards company are, in my opinion, allied in their activities and expenditures and both are compelled to spend more and take a more active part in getting business. (With respect to the matter of advertising the following question and answer appear:)

"Q. In the course of the evidence that has come into this hearing, both the present hearing and the former hearing, I have noticed a substantial variance in the amount of gross income of different firms or market agencies as applied to business-
1172 getting and maintaining effort, and have observed that in the great majority, if not all, of the instances, where that percentage of gross income applied to business-getting and maintaining expense was low, either that particular agency's business showed no increase whatsoever, but it ordinarily showed a diminution in volume greater than the average for all the agencies. As a business man and with your knowledge and experience in the business how would you account for that situation?

"A. Well, as I understand your question, Mr. Gage, in accounting for the decrease, or, perhaps, in an increase in business to the firm who did not participate in the activities of getting business, I would say that it was entirely due to the fact that they did not spend money on solicitation and the fact that they maintain any stability at all in their business would be entirely due to the fact of personal relationship or personal friendship with the livestock producers who ship to that particular firm. Such action on their part by not soliciting and helping out would diminish the entire volume of business on the market because they would fail to play their part in getting this business. The firms that have gone out and increased their business have done so by very active work and time spend in the field and expenditure of money, and, as far as our company is concerned, it has been our judgment in the last two years, you might say, 1930, 1931, and 1932, that we are required to put great' efforts forward than we ever did in order to get volume or get business at our market, because of these outside competitive factors."

There never has been a time in the history of the company when it was as necessary to get out and work to maintain the existence of the open market as it is today. If all the commission firms at the stock yards should reduce their business getting efforts and expenditures to the relatively low level of some individual firms, there would follow a decided effect on the volume of receipts coming to the market. It was the opinion of the management of the stockyards company that the commission agencies acted unwisely under all the circumstances in discontinuing their expenditures on account of the market paper to be

sent free to many of the patrons of the market. We thought it was unwise and false economy to discontinue the paper.

1173 In the year 1929 the business getting and maintaining, the soliciting, costs of drive-in business were relatively low. Since that time a substantial change has developed and it has become necessary to expend a considerable amount of effort in getting that class of business. It is my understanding that practically all of the market agencies are making an effort to increase that class of business.

It has been the purpose of the stockyards company in the relationship it bears to the American Royal Livestock Show to advertise throughout the adjacent trade territory and attract attention to the Kansas City market. Our company devotes a considerable amount of effort to the maintenance of the high standard of the annual livestock exhibition. Our company manages the show and the different market agencies take an interest in it. The show is beneficial as far as volume of receipts is concerned and tends toward the improvement of livestock conditions in the trade territory tributary to the Kansas City market. Our company spends effort and money in attracting buyers to the Kansas City market. If we have a buying demand it reflects itself in the volume of business handled at the market and reacts beneficially to the livestock producer in the price he obtains for his livestock. We have a keen interest in the welfare of the livestock producer and a very high interest in attracting volume of business to the market. Our efforts consist in mail solicitation, personal solicitation with eastern buyers, information as to the market. We encourage the order buyers in Kansas City in their effort to attract prospective buyers to the Kansas City market. We try to make buying conditions as favorable as possible for buyers. This is one of our most important services.

REDIRECT EXAMINATION

I think that as long as the difficulties about which we have been speaking remain and as long as direct buying is with us, we have a serious problem as to volume of business. If the price of livestock gets better the volume might increase to some extent, but you have to cure these other evils before there will be any material increase in volume. I cannot say that any cha'ge which has occurred in the livestock situation generally since 1929 has tended to offset the difficulties described. Market agencies mani-

1174 fest their interest in the American Royal Livestock Show through financial support and the purchase of tickets, their very active work in the boys 4-H Club, the vocational work done during the time of the show, through advertising the show

and by sending out pamphlets with their mail. They respond splendidly in their efforts in behalf of the American Royal Livestock Show. Our company does not prepare what can be termed a budget. We have before us every year the expenses from the time the company began. We do not allow any specific amount for any particular item for the subsequent year, but all the information we have from the operation of our yard for a period since 1913 is before us. Those items are watched very carefully. The amount for specific items fluctuates up and down. We place no maximum or minimum upon the amount to be expended for business getting and maintaining. The management exercises its judgment as time goes on in accordance with the necessity or the occasion.

REDIRECT EXAMINATION

The peaks in livestock receipts are not so noticeable now as they used to be. That is due perhaps to the development of good roads. There are still peaks but they are not as great as they used to be.

CHARLES H. HAREN, a witness called by the Government, after being duly sworn testified as follows:

DIRECT EXAMINATION

I am the same Charles H. Haren who testified formerly in this proceeding. I told the same position with John Clay and Company that I held then and have held it since the former hearing. Within the last several days I have read my testimony given at the former hearing. There are no changes in the testimony I wish to make, but there are conditions which have arisen since that time which that testimony does not reveal. There have been some changes in the nature of sheep receipts in that there has been an increase in the proposition of sheep trucked in to the market. There have been some changes made in freight rates and freight privileges. Hazards have been added to the loan business. There has been a considerable change in the
1175 activity of some loaning agencies loaning Government money. All these have tended to decrease receipts at this market and some of these changes have affected the market as a whole and some of them have affected the firm with which I am connected. The changes in freight rates relate to the matter of the through billing privilege and also to changes in actual freight rates from some points in the territory from which this market draws its supply. These freight changes have favored other markets as compared with Kansas City. The increase in the propor-

tion of sheep arriving by truck has added to the difficulty of handling sheep.

I took some part in making up the sheep schedule as set forth in Tariff No. 3. We were advised by our counsel after the last hearing that the rates under which we had been operating contained some features which possibly could not be defended in court and we tried to arrive at a rate which we thought would be equitable.

CROSS-EXAMINATION

The new tariff relieved some of the inequities that existed in the former tariff and reduced revenues. I had reference when I spoke of discriminatory features in the old tariff to the fact that it applied as to rail consignments a flat charge to the single deck carload and to the double deck carload, irrespective of the number of head in the car.

This year when I made my trip to Utah I found that a considerable number of our old customers had borrowed a dollar a head on their lambs through the Inter-Mountain Marketing Association and that these loans had been made with the consent of the Wasatch Livestock Loan Company and with their help. I was told that in some instances borrowers would be required this year to ship their lambs, if they came to market, to a commission firm who was associated with the National Livestock Marketing Association. Some of the borrowers were of the opinion that they could do as they had done formerly and ship their lambs to whom they pleased, with the understanding, however, that if they shipped to any firm on the terminal market other than one connected with the National Livestock Marketing Association a penalty of 5¢ a head would be assessed. I made inquiry of the Wasatch Livestock Loan Company in Salt Lake City and was
1176 advised that this year it would be compelled to restrict its borrowers to ship their lambs to a firm connected with the National Livestock Marketing Association. The statement was made that if this arrangement was violated the loan would probably be called. Since that time many of those sheep have been marketed and have been consigned to a firm connected with the National Livestock Marketing Association. A great many of these men are old customers of the firm of John Clay and Company and previously of the firm of Clay, Robinson and Company. Last summer sheep producers in the west who had obtained money from Government supported loan institutions shipped their lambs to John Clay and Company and paid the 5¢ penalty, instead of making the consignment to an affiliate of the National Livestock Marketing Association. This year they are not going to be al-

lowed to ship to any marketing agency other than one affiliated with the National Livestock Marketing Association.

On a double deck car of sheep with the minimum weight of 20,000 pounds a differential of over $36 in favor of Denver as against Kansas City exists. This is over twice the average commission charges on a double deck car of sheep. Receipts of sheep at Kansas City during the first 9 months of 1932 as compared with the first 9 months of 1931 show a decrease of 247,549 head. Receipts at Denver for the same period show an increase of 606,462 head. The top price paid for lambs in Denver yesterday was $5.50 per hundredweight and the top price paid in Kansas City was $5.40 per hundredweight. Denver is some 600 or 700 miles farther away from the consuming and packing centers that absorb mutton and lamb than is Kansas City. Prior to the establishment of this differential I do not recall in all my experience a time when lambs sold as high in Denver as they did in Kansas City. The Prospect yards and the Morris yards enjoy the privilege of consolidation of consignments as well as change of ownership on through billing. When we sell sheep at the Morris and Prospect yards we have to take our buyers from the stockyards here out to those yards and we have to take our sorters out there. This necessitates our furnishing a means of transportation for the buyer, the showing of the sheep, and the furnishing of a means of transportation for our sorters and salesmen. In addition it takes time from our work here in the yards. I have never attempted to take more than one buyer out at a time. I do not believe that they would consent
1177 to it. We have to find the buyers and take them out there one at a time. We have to hunt them up.

In connection with the operation of John Clay's business, we try to keep all of our expenses for every purpose as low as possible, consistent with efficient management. The owner-partners take a personal interest and devote personal time and attention to the business. The loan activities of John Clay and Company contribute materially to the volume of receipts. The partners of the company frequently come here personally to observe the operations. In the formulation of the new tariff I rendered assistance and made tests of various forms of tariff in order to ascertain their effect. I worked several nights and several days trying to devise one that looked like it would work. I found it extremely difficult to formulate a tariff that would remove inequities in the commission charges as set forth in the old tariff without producing a change which I thought was too radical. I do not contend that even the present tariff removes absolutely all of the inequities that existed in the old tariff.

REDIRECT EXAMINATION

The custom of ordering 40-foot cars and getting 36-foot cars and of charging on the same basis as if they had really been 40-foot cars brings about unfairness both to the commission man and to the producer. It would be unfair to the shipper who did not get the advantage. To illustrate: a shipper who ordered two 40-foot cars and got two 36-foot double deck cars and one 36-foot single-deck cars would be charged according to the billing for selling two cars only. Another shipper who ordered two 36-foot double-deck cars and one 36-foot single-deck car would be charged a commission for selling three cars. That would be somewhat in the nature of a discrimination as between shippers.

A tariff based on a headage basis with some limitations such as are set forth in the present tariff would, in my opinion, relieve the situation. In lieu of anything better to offer I offer the present tariff. I was not a member of the committee who drew up the tariff. I acted in an advisory capacity with them.

RECROSS-EXAMINATION

The tariff ordered into effect by the Secretary of Agriculture provided a charge of 20 cents per head as to
1178 drive-in sheep up to 65 head with no increase above 65 head until the consignment reached 125 head. That in my opinion would be a very apparent inequity. We should not be compelled to sell 119 sheep for the same price as we sell 65 and neither should we charge the owner for selling 65 as much as we charge the man who owns 119.

Mr. JOHN W. MURPHY, a witness called by the Government after being duly sworn, testified in substance as follows:

DIRECT EXAMINATION

I am the same John W. Murphy who testified at the previous hearing on December 18 and 19, 1930, my testimony extending from page 1386 to page 1459 and page 1507 to page 1594 of the transcript. I am still connected with the Bowles Livestock Commission Company and in the same capacity as when I previously testified. There are places where there are several changes to be made in my previous testimony. The main one is in the decline in volume of our business at Kansas City. Over the period of the last two years the decline in volume as represented by our own figures amounted to a little over $7,000 in gross commissions. I am comparing 1929 against 1931. A decline in net income would naturally mean a decline in salaries. We try to cut

our overhead and all other expenses as much as possible. To the best of my recollection we have made about three reductions in salaries and they started along in the first of 1930. I am not able to state the approximate date of the reductions. The reductions will vary from 15 to 35 per cent. The largest reduction was made about the first of 1931. I don't think there have been any reductions made since the fall of 1931. Our firm still has the same personnel that it had when I previously testified, with the exception of one or two yardmen. Two of them were transfers in which we let one man go and hired another. The other one was what we call an extra man. There has been no reduction in personnel since the first of 1932. I imagine our advertising expense has been reduced. That is because it has cost us less and we have reduced the amount of it. I have considerable control over the advertising policy of our firm. We main-
1179 tain quite an extensive mailing list, and have instructions with our advertising man, and all in the office that come in contact with this mailing list that we try to keep it up to the minute as much as possible both by inserting any new names and taking out the old ones. During this period of retrenchment we have made a greater effort than usual to pare that list down to an active list. It is to that list of customers that we send our market circular in season. The growers are in such financial condition that they cannot stand it any longer and the corn belt feeder is in the same financial distress, and he cannot buy anything. They have come to an agreement where these cattle could be fed on a gain basis or a stipulated price. We have been doing a little direct advertising for some of that business, but it is not very expensive. We are getting some results from it, but the volume of business we are losing right here at the Kansas City office due to that is going to be tremendous before the year is over. The tougher the going gets, the harder a fellow will go after the business, and while our cash outlay for advertising may be more or less last year than it was the year before, we are giving more time to it both directly and indirectly and through personal correspondence. With less volume we might have a little more time to devote to that angle of the business, but regardless of that, if we are going to stay in, we have got to go after it. I have made more country trips this season. We have spent more time on it, under greater difficulties, than in past seasons.

Another change has been in the volume of our hog business. It has been going direct to the packers. Formerly we had a pretty good hog business and with us it is practically a thing of the past. While our drive-in business has increased, it has not increased anywhere near enough to cover the lapse that we have

had in consignments. Naturally that means quite a loss in revenue as far as our livestock business is concerned. Another thing is the through movement of cattle through this market, which is a loss of revenue. It entails a lot of work that we really derive no benefit from.

I am fairly familiar with the headage schedule contained in tariff No. 3. In a sense I assisted in the preparation of this schedule. I think that a good many took part in it. We used it as a means to an end to make an equitable reduction in commissions. I offered some suggestions. I have paid more
1180 attention to the cattle, but I have observed the schedule as a whole. We have found it satisfactory. I don't think it places an undue burden on one class of consignments as compared to another.

CROSS-EXAMINATION

Some applications of different forms of suggested tariffs were made by our firm before the one was approved by us. We consulted with other representatives of different respondents during the period that the tariff was under discussion. It was also discussed with the attorney for the respondents. It was our purpose to formulate a tariff which was more equitable as between consignments containing different classifications within each species and also a tariff that would result in some gross reduction to the shipper.

The Bowles Commission Company is not a separate concern from the Bowles Commission Company that operates at Chicago. Our finances are separate but we are generally affiliated and work together. Both J. P. and John H. Bowles at Chicago assist us in handling our business. The Bowles brothers have been in the commission business 32 years. I have been in the commission business 24 years. Before that I was connected with a packer for seven years as a buyer. From the Government audit, Exhibit 14-12, in the original hearing, and the audit for the year 1931, it will be seen that despite the economies which we have practiced and the salary reductions which we have made and the lower drawing accounts of owners, we still met a loss in our operations for 1931. We gave no free subscriptions to the local market paper in 1931. The item in the audit covering market letter refers to our circular. On account of the more intense competition, we have had to increase our effort to hold business and maintain volume. In some instances that has involved additional expenditures. The increased expense for advertising, as shown by the audit for 1931, as compared with the audit for 1929, was incident to our greater effort to hold and get business.

In my judgment and from my long experience in the business with the present conditions of competition prevailing that I have testified to, the rendition of capable, competent, efficient, and trustworthy service will not suffice altogether to hold business and maintain volume. We are in a public business and we
1181 have got to keep in front of the public and it naturally requires a specified amount of advertising either in one form or another. We are in a highly competitive business.

The tremendous decrease of hog rail shipments would be one factor that would enter into the considerations that originated the present hog schedule. To build that business back, they would have undoubtedly to put out some inducement that they had not done previously to try to draw that trade back to the market. Another thing is probably the value of the commodity itself, it has depreciated so much. Hogs have depreciated in value to a greater extent than cattle. There was a time in the commission business at Kansas City when the hog business was rather the back log of the entire structure. There was comparatively a greater degree of profit in handling it. The opposite is true today. That was partly due to the very intensive development of direct buying campaigns and off market purchases of hogs by local packers. That competition has grown considerably more intensive in the last three years. It now applies to truck-in consignments of hogs as well as to rail consignments. The element that confronted those who formulated the hog schedule was altogether the competition element and trying to draw more of that business back.

There used to be throughout the surrounding country, at country points, stock buyers who purchased odd lots of hogs where farmers had less than carloads to sell at one time and they consolidated them and shipped them into the open market. Frequently these men would send in two or three carloads at a time. These stock buyers have practically gone out of business, or if not out of business have become buying agents for packers as to hogs.

I find that falling markets and declining prices make it generally more difficult to dispose quickly of my consignments. It has been particularly difficult to dispose of grass fat cattle in recent years. The change has been very noticeable in my length of time in this business. I think it is in the worst shape that I ever saw it. Twenty-five years ago I have seen packers buy as high as 40 or 50 cars of grass cattle in one string. Today it is almost impossible to sell any one packer four or five cars of any one particular kind of grass fat cattle. This fall is was the exception where that many of one kind was bought at one time.

There were days here this past season where grass fat
1182 cattle were almost unsalable to some of the packers unless we wished to let them mark their own ticket on them.

When I speak of selling cattle or any other species of livestock, I mean selling them at the highest obtainable market price. My firm had four salesmen and buyers during the year 1931. They worked all through the full year. They were constantly at the market during the selling period except for country trips. We could not have dispensed with the services of any one of them or any part of the services of any one of them except at a loss to the concern. That loss would apply more to the customers. I imagine that the customer would have lost more than the compensation of that salesman in the price received for the livestock.

The usual market hours with respect to cattle are from 8 o'clock to 3 o'clock in sales made to packers. We sell to feeder buyers any time after 8 o'clock. Such sales generally cease between 3 and 4 o'clock. The rest of the time of the four salesmen is employed in handling correspondence about sales. When occasion demands it, they do a certain portion of the yard work, taking care of cattle that have been bought after market hours. In the fall of the year, we generally always have somebody out at the end of the week on appraisal trips in the country. During the spring and summer, we generally try to keep a man or two busy, either soliciting new business or making appraisals. I will venture to say that the bulk of our soliciting is done on request. Is done primarily during the latter part of the week when it is most convenient. The market is open, of course, every day of the week, but there are generally five market days and four in which the bulk of the volume is handled. Those days are Monday, Tuesday, Wednesday, and Thursday. Frequently, we have a substantial volume on Friday. The distribution between the various days is not the same in any two weeks.

The competition of the Producers Commission Association, or its activities in the cattle loan business have affected my firm since 1929. The Texas Cattle Raisers Association is one of the affiliated organizations or subsidiaries of the National Livestock Marketing Association. I can give specific instances where the normal flow of our customers' cattle to our firm for marketing has been affected by this competition. There has been an in-
crease in the through non-revenue-producing movements
1183 of cattle at Kansas City this year. A greater percentage of the total receipts have moved on without yielding any revenue this year than in 1931 and 1930. It is my understanding that the Stock Yards Company includes in figures of total re-

ceipts all cattle arriving at the market whether they are sold here or not. Thirteen or fourteen thousand head of the G. R. White cattle were included in the receipts at Kansas City and none of them sold at Kansas City.

The fact that the courts here in Missouri have compelled the Exchange to extend all of its market facilities on equal terms to both members and non-members has not helped us any during this period of diminishing receipts through economies that might result from consolidation of firms or decrease in the number of market agencies. We have absolutely no control over the right of newcomers to enter the business at the market. Anyone can come down there now under the Packers and Stockyards Act regardless of his financial ability or his standing. We are compelled to do business with that party whether we like it or not. All that is necessary is that he give a bond. If firms wanted to consolidate so that owners would do a larger percentage of the work, thus releasing a number of employees, those employees could immediately set up another firm if they saw fit. That has militated against the ability to adjust the personnel of the Exchange to diminish total receipts. The intensive effort of the affiliates of the National Livestock Marketing Association has resulted in the necessity for more extensive effort on our part to retain our business.

REDIRECT EXAMINATION

I am still a director of the Exchange. As to how the formation of this tariff was handled, it was an open meeting to any one and they all worked together as the best means to an end. Any one's suggestion was acceptable to the few that were trying to establish an equitable rate. At such meetings as were had, the Producers Association and the Farmers Union Commission Company were asked to sit in. These meetings were held some time early this year. Some one of the Board of Directors would generally be the chairman. I do not recall that all members were present at any one time. The Producers and the Farmers Union were present at numerous meetings. I imagine that it was the idea of those meetings to arrive at some basis on which all
1184 could agree as to the rates to be charged. It was my understanding that anyone could make a suggestion in regard to the rate. I do not recall who drew up the tariff finally filed by our firm. In working on this new tariff, the only definite figures which I had on the cost of handling cattle and calves were what I could see from our own figures in our own office. We did not figure out how much it cost us to sell a car of cattle or a car of calves. We did not attempt to figure out costs and allo-

cate them to the different classifications. It looked like the commission men had to do something, either increase their volume or cut down their overhead and eliminate whatever expenses they could. Everybody based it on volume of business which they had been doing in previous years. I think you will find the old-line concerns here have done an equally fair amount of business over a period of time. They probably based it on the opinion of what reduction they could stand and still maintain our service and selling ability at 100 per cent. I do not think any firm presented unit cost figures showing what it cost to sell a carload of cattle and calves according to these three classifications as to weight. We had no definite line on how many head of our receipts would fall under these classifications according to weight when we put this tariff into effect.

We are working on the same salary schedule that we had at the close of 1931. We contemplate saving anything and everything we can, but I have nothing definite in mind at this time in the way of contemplated reductions. We have to do a specific amount of advertising. If we do not keep the name of Bowles in front of the shipping and farming and ranching communities, as well as the varied livestock producer industries, we probably would have a pretty short life. Service alone will not do that, although I consider service the most essential factor. Outside the character of service rendered, I do not think of any more effective method than direct contact and personal correspondence. By direct contact I mean both trips to the country and visits in our office.

When I stated that a declining market make it harder to sell livestock, I mean a declining price. It is harder primarily when you have a declining market both in fat cattle and stockers and feeders. It is due to lack of buyers. Ninety-nine times out of a hundred, it means a declining market. The buyer is more pessi-
mistic about prices of the salesman and the salesman tries
1185 to hold out and force his hand. We have been experienc-
ing that declining market here at Kansas City; with the exception of one or two periods, it has been going on I think since 1922 or 1923.

The prices which salesmen get for the same class and grade of cattle at any given time naturally vary with the salesman's ability. First he has to be a judge of the cattle he is selling and he also has to be a judge of the buyer. There will be a variation to some extent, and once in a while to a large extent. Not only the selling element but also the buying element enters into that variation. If there were only one order for a class of cattle which I have, and there were other cattle of the same class on the mar-

ket, and I was fortunate enough to catch the order buyer first, those who had the same grade of cattle would probably have to take a price in reduction, depending on the matter in the market.

We have three salesmen that are handling cattle, and each of them has devoted a life to the business. There are people there that I could sell cattle for that maybe my assistant could not, due to the personal confidence that that man may have in me, and that same may hold true with both the other salesmen. They do business with us because they have confidence in us, and if we are continually changing our line of salesmen from one concern to another, it is only natural that it is going to be expensive, also to the man that is following that particular salesman. He gets out of his line of work, and if he is with another concern, he has to start over. We deem it expedient to hold on to a good man, both for our own good as well as our customers; and from the standpoint of our own good, it means that while we hold on to him, we hold on to a certain volume of business. If we could have increased the volume of our business, we could have handled it; but I would like to add that due to this decrease in volume, any one connected with the Bowles concern has devoted considerably more time to being on the job and in the business than they did previous to 1929 or 1930, and not through a matter of choice either, but because they had to. The requests for appraisal trips come largely from the party feeding fat cattle in a radius of 200 miles. That applies to our winter, spring, and early summer business. Occasionally during the fall months we have specific request from Texas, New Mexico, and Colorado ranchmen to call on them, if we will, and give them an estimated idea of
1186 what their livestock would bring on the present market.

It has happened that the firms at the Kansas City market have spent considerable time in looking after pasture contracts and looking after the cattle after they are on the pasture, and then they might not get the livestock when it is finally marketed. That could happen even though the Texas Livestock Marketing Association never existed. That association is composed of producers of livestock. Referring to the 13,000 or 14,000 head of cattle owned by R. G. White, I would venture to say that 90% went through to the Illinois feed lots. The cattle were handled on this market by the Producers Commission Association.

There have been consolidations effected at the Kansas City market in recent years. I meant that the Exchange would be forced to admit market agencies to the use of the facilities of the Exchange on equal terms. It could not be forced to admit anybody to membership. Those facilities would be the clearing house, and hog dockage, for which there is a stated charge. This

business is founded a great deal on personal service, and while that consolidation as far as overhead expense is concerned might promote a saving from that end, it might be handled also by a class of salesmen, selling cattle that the cost in their operations or their selling ability would more than overlap what incidental savings they might make in their consolidations. I think circumstances in the last three years have forced more consolidations than we had in the seven years previous on this market. I went into the business because I thought I could show better financial results. One would have to consider both the possible business which he can get and the rates under which he is going to operate.

RECROSS-EXAMINATION

It is the turnover under the rates that determines gross income and eventually net return. The rate itself might be detrimental in being either too low or too high. Competition for business on this market has been very keen, and it has been a tremendous struggle for even the old firms to maintain themselves.

In referring to the situation arising out of the inability of the Exchange under the existing law to control the number of firms on the market, I had in mind the situation that involved Dell Hubbard, who was formerly a member of the Exchange
1187 and after being unseated went into business as a nonmember and asked for these services of the Exchange, concerning whom there were certain legal proceedings brought under the Packers and Stockyards Act. These clearing house facilities are extended to non-member firms on the same terms as to the basis of compensation that the Exchange members pay for those facilities.

If a salesman has a lot of consignments on his hands of different qualities, he would be handicapped. He would probably have too many different classes of cattle to handle. If he were a fat-steer salesman, he would be devoting his time and energy to the selling of that particular class of animal. An up-to-the-minute salesman is apt to know, or have some idea, where the buyer is and who is most likely to have the order that will fit the exact quality and weight of cattle that he has in his pen. A salesman who had only a single consignment might have filled the order before the salesman with the dozen consignments could have done it.

The reduction in the number of salesmen in my firm or any other firm may readily involve a reduction in efficiency. That might mean a margin in the price of several times the commission.

Producers are going to take the best that they can get. A good going concern that has been handling a fair amount of business year in and year out over a period of time, if it is on its toes for business, is going to have a man capable of taking care of the different classes of cattle. If they do not get sufficient volume to employ those men properly, they could be faced with the necessity of remedying such a situation. Compared with two years ago, it requires a considerable more time to sell cattle on account of the declining market which we have had. There have been days out here when we have not had a market at all after 10 o'clock in the morning. Sometimes we have had to take the prices that these fellows mark on them or leave our cattle unsold. If we are unfortunate enough to get caught in that situation, the possibilities are that they would take less for the livestock the following day. That is due absolutely to the falling prices in the livestock. I do not believe anybody has been blessed with enough business down there in the last couple years to worry about the volume.

Whereupon the witness was excused.

1188 Mr. GEORGE W. HOBBS, a witness called by the Government, after being sworn, testified in substance as follows: after being sworn, testified in substance as follows:

I am general manager of the Farmers Union Livestock Commission Company at the Kansas City market. I have been general manager of the concern for approximately four years and have been with the firm altogether approximately twelve years. I have testified previously in this case. I recognize Government Exhibit 103 as being a copy of Tariff No. 4 filed by my firm. There has been a change made in our tariff since that tariff was filed. The tariff filed prior to Tariff No. 4 was the same as the tariff of the Kansas City Livestock Exchange filed effective May 23 as shown in Government Exhibit 101. I have a copy of the tariff filed subsequent to Tariff No. 4.

Government Exhibit 103–A

Government Exhibit 103–A became effective October 10 and is now in effect. Compared with the tariff filed effective June 18 there is a decrease in commissions mostly on hogs. In the former tariff the rate was 20 cents a head with a minimum of $10.00, each additional head was 20 cents a head not to exceed $12.00 for a single-deck. Under the tariff effective October 10 the rate is still 20 cents a head up to 40 head inclusive with

10 cents a head additional not to exceed $12.00 for the hogs in a single-deck car. Under the tariff of October 10 there will be no service charges on hogs. In the tariff of June 18 the minimum charge on a single-deck mixed car was $15.00. We have reduced that minimum to $12.00. On a double-deck car the minimum was $18.00 and now is $15.00. The per head rate on drive-in cattle was reduced from 70 cents to 65 cents, and calves from 35 cents to 30 cents per head. The number of head has been changed in the consignment of calves received from 70 in the former tariff to 75 in the later tariff. In the former tariff an additional charge of 50 cents per head was made on over 50 head and the later tariff a charge of 25 cents a head is made. The maximum has been changed in the later tariff to $17.50. On hogs received by truck the charge is 25 cents per head and the maximum charge of $13.00 up to and including 60 head with 20 cents per head additional above
1189 60 with a maximum of $17.00. The later tariff reads practically the same except the maximum on any one consignment by truck is $14.00. In the later tariff it now reads 25 cents per head up to 40 head and 10 cents for each additional head with a maximum charge of $14.00 on any one consignment. Under the former tariff it should have been $17.00 for 100 head and then the tariff would start over on the next 100 head. Under our present schedule a man can ship 150 hogs for $14.00, the minimum charge on any one consignment. In the former tariff cattle were $1.00 and the later tariff is now 75 cents, calves were 50 cents and now 35 cents, hogs were 40 cents and now 30 cents, sheep were 35 cents and now 30 cents. The draft charge has been reduced from 25 cents to 15 cents per draft. The tariff filed effective June 18 was the tariff prescribed in the Secretary's order. There were changes made. Lower charges on yarding services were filed than were prescribed in the order.

The Board of Directors are responsible for the tariffs that are filed from my firm. I act under their direction in doing that. The reasons for filing this new tariff were conditions over which we have no control. They were general economic conditions and competition. It was through my efforts that the lower tariff was not filed at the time the Secretary's order became effective. The Board of Directors of our firm has had this in mind for a long time and they finally reached a decision to do this on September 26. The Board of Directors of our firm are all producers of livestock and in their meetings they have discussed economic conditions considerably. In making loans at the present time it is almost impossible to get a statement that the Board will pass on. In the past year I have handled over

500 property statements from producers of livestock throughout this trade territory. Only 65 of those property statements were able to get by the Board. That would seem to me an answer to the economic condition that exists, taking into consideration the fact that 50 per cent of the statements would pass three years ago. The matter of rates has come up in every Board meeting for the last year and a half and each and every member of the Board of seven was decidedly in favor of a decrease in amounts. That has been based primarily on the fact that there has been a change in the economic conditions. In the tariff
1190 that was filed June 18 the extra service charges on hogs were provided for. They are not in the tariff that was filed by the Livestock Exchange. It made it necessary to reduce our tariff somewhat for competition reasons.

According to a comparative profit and loss statement as of September 30 the firm has made a reduction in expense of $3,865.09 in 1932 as compared with 1931. That is for the first nine months of 1932 compared with the same period last year. There is a difference of $300 in field man expenses and over $6,000 in salaries. Some of the other expenses have increased to take up the slack. Advertising shows an increase of approximately $300, auditing $100, automobile expense $500, depreciation on automobiles $100, extra labor $800, miscellaneous $150, postage $150, printing and supplies $100, and rent $850. Directors' fees show a decrease of $200, horse hire $100, and telephone and telegraph $150. The increased postage rates and a tax on checks will increase our expenses about $100 a month. We write about 2,000 checks a month. We use first-class mail for sending out account sales and personal letters. At the end of the year our advertising will be practically the same as it was last year. That is due to the difference in the method used in paying for our radio broadcast. For the first nine months of this year we received 2,000 carloads of livestock and the equivalent of 1,639 cars by truck.

CROSS-EXAMINATION

I have no change to make in my previous testimony with regard to the organization of our firm and the character of its operations. The Farmers Union is a cooperative organization with membership in the country. We are organized on the basis that if there are any profits in the business we make refunds to our membership: I manage the business as economically as is possible to manage it. I run it efficiently in my judgment. I stated that the cattle rate in the Secretary's tariff particularly on rail consignments was to low to make a profit.

Under the schedule of May 23 where there was a plurality of ownership it was expressly stated that in a unit of more than one carload it would be treated as separate consignments. That in a measure took care of the situation to which I just referred. Using the schedule of October 10 the commission on 100 hogs would be $18.00 or 18 cents a head. Where there are 120
1191 head in two carloads of 60 head each the charge would be $18.00 under the Exchange rates effective May 23.

Under our tariff of October 10, the commission charge on two cars of 120 head of hogs, weighing over 130 pounds, would be $20.00 or 16⅔ cents per head. In extreme cases, this present tariff with its minimum and maximum increases the charge relatively as compared with the other tariff when the consignment grows larger. This rate was sent out by the Department of Agriculture but was revised by my board of directors in an attempt to lower the commission on hogs because of unfair competition and because of economic reasons. If the rate is higher than the rate in the Exchange tariff, I cannot be blamed for it. The Department of Agriculture rules that the rate on October 10 is lower than the rate of May 23. We adopted this schedule on June 18.

We applied the tariff of May 23 against the tariff that was in effect previous to that time. It showed a decrease in cattle of around 9 per cent and 15 per cent on hogs. It was very little on sheep. In changing the tariff of May 23, I was utilizing primarily the results procured under prior tariffs.

REDIRECT EXAMINATION

Our firm handles some livestock for non-members. That amounts to approximately 15 per cent of our business. There has been no change in our personnel during the year 1932. I consulted with members of the Exchange some when they were preparing this tariff of May 23.

In the hog yards we have our own driver to drive hogs from the truck unloading chutes to our pens. At the cattle yards we hire some one to deliver to our pens by the head. We pay six cents a head up to 20 head and five cents for each additional head. There was a change in that sometime during the year 1931.

I do not regard the tariff of October 10 an improvement over the one of June 18, except as far as hogs are concerned. There is not a firm that can make money at the stockyards on this rate. I am speaking now of old line firms. It is necessary for them to go out for business that we do not have to go out for.

They not only cannot make money in this tariff, but they cannot exist on it. You can take the number of cattle, calves, hogs, and sheep that they receive and figure it out. You can figure
1192 it out from an income standpoint and they cannot exist on it. I base my conclusion on the volume which they receive. The volume of business would have to increase materially for the firms at the Kansas City stockyards to find this a profitable tariff. We can operate under the present tariff, but I don't know whether we can operate at a profit or not. The service will not be impaired by the reduction in commissions.

RECROSS-EXAMINATION

In the application of the Secretary's order to our business for one month in the summer we sustained a loss. That was something unusual in our business. The direct buying of hogs by packers has been increasing, and it has become extremely competitive and extremely difficult to meet. It requires constant activity even on the part of an organization with a membership like the Farmers Union to combat it.

REDIRECT EXAMINATION

We experienced a loss during the month of July. April and July are our low months.

RECROSS-EXAMINATION

I would say that it would be necessary for a firm handling the volume of business that we handle to have $15,000.00 to $20,000.00 to operate. To provide for emergencies that might arise, it is desirable to have the reserve of $50,000.00 which we possess.

REDIRECT EXAMINATION

There have been other systems of marketing, at all times, in the Kansas City trade territory in addition to the open market. In saying that my firm should have $15,000.00 to $20,000.00 cash working capital, we would use that in paying for livestock that was purchased, and waiting from three to seven days for a check or draft to clear, it is very necessary that we have a bank balance to take care of that. We need that chiefly in connection with our purchases. I was speaking of a general average. There would be times when we might use more money for our purchases. Capital would be necessary.

In connection with the selling of livestock on a
1193 commission basis, especially if a man asks that his money

be given to him the day that he is in, and we are not able to collect that money until the next day. We have much of that at the present time because of the truck situation. The amount required in connection with selling would be slightly less than that required in connection with making purchases. Some of the respondent firms on the Kansas City market have solicited business or attempted to get business, holding out the inducement that the rates charged by them are lower than the rates charged by our firm. I have letters to that effect.

This particular letter is addressed to the Frankfort shipping association at Frankfort, Kansas, under date of September 16, as follows: "Gentlemen: We notice a shipment of hogs on this week's market. Are you aware that the hog selling commission of our firm and others averages a good deal lower than the Government rate which we think you have paid recently. No matter how many hogs you have in a consignment, whether 60 or 300 head, our charge is $10 for the first 40 hogs and 10 cents per head for each additional hog, no extra charge whatever for prorations or weighing. We would be pleased to have you figure this out yourself and compare it with what you pay for we are sure that a saving would be welcome to you in these most troublesome times."

A second letter under date of September 22, addressed to the Frankfort Farmers Union, Frankfort, Kansas, is as follows: "Gentlemen: Do you know that we now sell hogs at a much reduced commission rate, especially on prorated shipments. Our charge is $10 for the first 40 hogs and then 10 cents additional, no matter how many you have here on one day, and they are billed in one name. There is no charge whatever for weighing separate, prorating or separate account sales. There are four of us working at all times in the hog alleys and we would especially appreciate a trial consignment from you."

Under date of September 22, Mr. Emil Samuelson, Randolph Farmers Union, Randolph, Kansas, wrote as follows: "Dear Friend: Just wanted to call your attention again to that rate for selling hogs. No matter how many you have here, whether one head or ten, the charge is $10 for the first 40 hogs and then 10 cents a head for each one extra; no charge for proration, 1194 extra account sales or anything else. For instance, if you had 150 hogs here today, in two loads, the charge would be just $21 no matter whether they belong to 50 different parties."

The next letter is under date of September 22, and addressed to Mr. Endorf. The first part of the letter contains nothing but market quotations with a postscript: "Remember commission charges here are $10 for the first 40 head of hogs, then 10 cents

per head additional no matter how many one has, no extra charge for prorating or weighing." These letters are all signed by Martin, Blumquist and Lee, by C. E. Blumquist.

I personally contend that there is an ambiguity in the section of tariff No. 3 in regard to plural ownership consignments. Section D of Tariff No. 3 plainly states that two car loads of livestock plural ownership will be charged separately.

(Whereupon the witness was excused.)

W. B. ECTON, a witness called by the Government, after being duly sworn, testified in substance as follows:

DIRECT EXAMINATION

I am the same W. B. Ecton who was a cattle salesman for the Producers Livestock Commission Association, and testified at the former hearing as shown on pages 2028 to 2093 of the transcript of record. I still hold the same position with the Producers Livestock Commission Association. I ran over my testimony given at the last hearing just once. I recognized it all right, yes. In view of the fact that I testified in the latter part of the year 1930, and this is getting on toward the latter part of the year 1922, no doubt I might make some changes at the present time regarding the past few months, or a year, I might say, in my testimony.

Q. Yes. Now, Mr. Ecton, will you tell us in your own way what changes, what you have to say now in explanation of your former testimony to make it applicable to things as they are now?

A. Well, I do not know what points you are referring to. I would refer though to the condition of our market,
1195 the depression that we have been going through for some time. The cattle have been going down, the market has been very dull and hard to dispose of these cattle.

Q. I take it, Mr. Ecton, that the general manner and method of handling cattle on the market, the matter of selling them is the same now as it was then?

A. Just the same only it takes more work.

Q. It takes more work now?

A. Yes, sir.

Q. And that is due to what?

A. Due to conditions.

Q. Because they are harder to sell, you mean?

A. Yes, sir.

Q. And that is a market condition, I take it?

A. Market conditions, yes, sir.

Q. That is a condition of the lack of demand, is it?

A. That is it, sir.

Q. Now, Mr. Ecton, did you have in mind any other way in which conditions are different now from what they were when you formerly testified?

A. Well, I would not say that I do unless you would give me some specific question to answer.

Q. Well, I just wanted to get your views on that because I really do not know myself what changes may have taken place.

A. All I can say was that we have had a very unsatisfactory market and it is very hard to tell from one day to the other what it would be.

Q. And in your opinion, Mr. Ecton, is it due to the depression, bad economic conditions now?

A. It must be.

As to any changes since that time, I would refer to the condition of our market, the depression that we have been going through for some time. The cattle have been going down, and the market has been very dull and hard to dispose of these cattle. The manner and method of handling cattle are just the same, but it takes more work. They are harder to sell. That is a condition of the lack of demand. All I can say is that we have had a very unsatisfactory market, and it is very hard to tell from one days to the other what it would be.

1196 CROSS-EXAMINATION

Corn fed cattle are my specialty. We have a man that sells these grass cattle, and I haven't sold a car of them this Summer. I have observed an increasing difficulty in obtaining satisfactory buyers for grass cattle. That condition has been growing worse. Corn fat cattle have been selling at quite a premium over grass fat cattle, and they are still selling that way. Our customers over in Clinton and Clay Counties that feed and produce corn fat cattle do not send any of the cattle that they have ready for market at one time under present conditions. It used to be that they would not think of going to market unless they would get all the neighbors and make up a full train load. This train load would go into one commission firm and the packers would buy in large lots. It could not be done now. They do not ship them that way. We generally do not get over two loads at one time from a feeder. It requires more sales to make four shipments out of one. That is a situation that has been developing over a good long period. It is certainly no better and as a matter of fact it seems to be going the other way. The consignments are getting smaller. The market does not stand up under these big shipments like it used to. I remember one year in Chicago that we

had 84 cars of good fat cattle of my own trade, and I never left the alley to sell them. It could not be done right now the way conditions are. A salesman has no control over those conditions. The buyer does not altogether determine that. He has got to consult with the salesman once in a while. I would be perfectly satisfied to trade with the buyer if we could agree. His orders are not strong enough to take that many cattle now of one outfit. The Rolla White cattle, which went through the market this Fall were not offered for sale on this market. We watered, fed, and weighed up these cattle and they were ordered out. There was a lot of cattle I didn't see. They were put in a different part of the alley and our yard men looked after them. A salesman would get along better and could come nearer to getting a market for cattle if he has the ability to judge those cattle and appraise their quality according to the market. When I talk about selling, I mean to sell efficiently. A farmer could come in and sell his cattle if he wanted to, but I think he would make a poor job of it. Acquaintanceship with buyers and the nature of
1197 their normal demands has quite a good deal to do with it.

It helps you out a whole lot if the buyer has confidence in what you tell him. I have done very little soliciting in the country for the past two years. I always felt my services were worth more right in the yards where I belong than out in the country. I am a very poor solicitor to go to the country. We are ready to sell cattle at eight o'clock, but the buyers do not start right on time on all days.

Sometimes I get through at twelve o'clock, and some days I am hardly through at three. That depends entirely on market conditions. Some days it is harder to sell a few cattle than it is on other days to sell a good many more. I have seen days that took me longer to sell two cars than it did to sell twenty. Generally I don't have any trouble in selling the cattle if I have a demand for them. Number does not cut any figure when they want these cattle. When the buyers sit around in the alleys until ten or eleven and on some days twelve o'clock we have got to wait. Feeders had a very good year right up until recently on their choice corn fat cattle. These cattle are not doing so well now, but some of them are still making money. We had a very good cattle market this Summer on fat cattle, but we have had quite a break of $1.00 or $1.25 a hundred in the last two weeks. There has been a good demand for light weight stockers and a poor demand for the weighty feeders. Two months ago there was quite a demand for heavy cattle to take out for a short feed. In 1931 we had as cattle salesmen and cattle buyers, John Myers, who is not with us now, a man by the name of Russell that

sells our butcher stuff, Boone Killgore who sells our stockers and feeders and myself. Then we have two men that buy cattle for us. They are John Scott and Roy McLeod. We have a man by the name of Bruington and he buys some cattle. We are preparing him to sell calves. It is a general practice of the market for a man to start with the calves and work up through all the divisions of the business depending on how he takes hold. We would put him on the stocker, buying stockers or feeders. Butcher stuff and stockers and feeders are altogether different. Different buyers take hold of them. It takes a pretty good man to handle butcher stuff. There are so many different classes and sorting to do. Some fat steer salesmen are more experienced than others. At the present time I would be considered to have more qualifications to sell fat steers than Mr. Bruington. 1198 Experience doesn't hurt any. There are some few that don't learn much by experience. I don't think there is any man but what he thinks he is doing his best, but I think the judgment of a lot of people is better than a whole lot of others.

REDIRECT EXAMINATION

Fat cattle are not altogether the heaviest class of cattle that come to market. We have some light cattle that are very fat. I sold cattle yesterday weighing 925 pounds at 8¼, the extreme top of the market, while you could see 1,400 pound cattle selling from 7½ to 7¾. During the past few months there has been rather a scarcity of our choice heavyweight cattle. The bulk of the corn fed cattle run more to lighter weights. Some of these choice lightweights will sell some days higher than the others. It depends on the orders these men have. These lightweight cattle, unless they are finished, have been rather burdensome on the market. What we call butcher cattle are cows and heifers and common steers. Our butcher salesman also handles the bulls and they often run in heavy weights. We have both heavy and light stocker and feeder cattle. Our best demand is for the light-weight shipments at the present time, and the best prices are on the yearlings. The price per hundred is not altogether governed by the weight of the cattle. Quality and finish have all to do about the price. It takes quality to bring the top price. The buyer wants quality and price and tries to get some that will go out and make good gain. They feel safer in buying the light cattle than they do heavyweights. They don't cost so many dollars and they get a bigger gain on them in weight.

In speaking of the conditions in the old days, when one buyer would buy a large quantity of cattle, I was speaking of packer

buyers. They don't have those kind of orders these days. The demand for beef, I suppose, has brought about the difference. In selling large numbers to any one firm, it is worse now than it has been at any time. Even before the depression, it was harder to sell large numbers to one firm than it was in the old days. We have a few order buyers at Kansas City but not very many outside of the packers. We have some very dull days when it is hard to dispose of cattle. We have to wait until the buyers get in the notion that they want to buy some cattle. There are
days when they won't bid you, and when these packers get
1199 their orders filled price does not cut any figure. If we have
any left over, we have to hold them until the next day. We always like to sell every day what we can. Once in a while we cannot. I should think that the orders would be the cause of dullness in the trade. They have to have orders to buy them. Their orders are unlimited some days and other days they are limited. On the days that the market is good, I can sell all the cattle I have to sell. On days when the market won't take them you don't need anybody to help you because you can do it yourself. All qualities and conditions of cattle come in both by rail and by truck. I have sold three or four bunches of cattle in the past ten days, that came in by truck, at the extreme top of the market. You can get just as good quality in the truck as you can in the car. We get choice cattle by truck and we get common cattle by truck. We get all kinds. The same is true by rail.

RECROSS-EXAMINATION

I have had some choice fat cattle by truck from over in Clay and Clinton Counties. I have had as high as eight or ten trucks of good cattle in one day. There are some stockers and feeders that come that way. We get more fat cattle by truck than we do stockers or feeders in our alley. More or less. We have a lot of dairy breeds and mixtures in the territory immediately surrounding Kansas City that is served by truck. Our best stockers and feeders come from the West. I have seen some lightweight fat steers weighing 750 pounds, which would bring more than 1,400 pound cattle. We would call anything a lightweight which is between 900 and 1,100 pounds. We have some lightweights lighter than that that are choice. We do not get so many of that class. Heavy weight is from 1,200 pounds up, and a medium weight steer is from 1,000 to 1,150 pounds. On these dull days I light up my old pipe and sit on the fence and smoke until some buyers come around. I stay and wait for them to come. They know every morning when they leave the office what kind of cattle I have in my alley and how many loads. It is not

worth while to run after them until they get ready. You just weaken your hand. The order buyers also know.

Dick Arnett is an employee of the Texas organization. He places cattle on grass in Kansas and orders them out
1200 whenever they get ready for market. If the cattle come to Kansas City, the Producers Commission Association gets them.

(Whereupon the witness was excused.)

MR. CHARLES F. VIEREGG, a witness called by the government, after being sworn testified as follows:

DIRECT EXAMINATION

I am the same Charles F. Vieregg who testified on December 8 and 9, 1930, at the previous hearing. I was at that time connected with the W. M. Leitch Sheep Commission Company and still sell sheep for that company at the Kansas City Stockyards. I have been continuously so engaged since the last hearing. I have read hurriedly my former testimony. It would be necessary to make some changes and additions in that testimony in order to make it conform to conditions as of the present time.

This year we shall not have nearly the number of sheep that we had a year ago or two years ago. The main reason for the decrease in the sheep business is the change in railroad rates effective in January. The rates do not now allow the Kansas City market the privilege of sorting and diverting sheep which do not take the through rate. A packer can buy his sheep in Denver. They can sort them or do anything they want, fix them up so that they have a full car sold, and ship them to New York and, as I understand it, for 18¢ or 19¢ less per hundred than they can ship the sheep from Kansas City to New York. It is causing more sheep to go to Denver, but, as I see it, it is the real cause for lower prices of sheep. For example, today Armour & Company would not buy a hoof in Kansas City because they had some coming out of Denver yesterday that would be here tonight. Otherwise we might have forced them to pay 25, or at least had a steady market today; but they were out of the market, and the buyer told me that he had the sheep coming out of Denver, and before he would bid on my sheep, he said he would have to find out how many would be down from Denver; and when he found out, he would not bid on my sheep at all.

Certain expenses of doing business have increased. The tax on checks for August was over $18. Our postage bill
1201 is at least 50% above what it was under the 2¢ rate. Telephone and telegraph bills show a 10 or 15 per cent additional charge on account of taxes.

Another increase in expenses is on account of the fact that I have sorted sheep at the Prospect and Morris feed yards and sold them out there to feeders in order that we might take advantage of through rate. On one particular day I had a crew at the Morris yards and another at the Prospect yard at the same time. We were busy all afternoon and did not get back to the office until 6 o'clock. We stayed at the office until eight or nine. I had one or two men extra out at the Morris yards. If we try to save our customers what we can in freight, it means we have got to work Morris, Prospect, and Kansas City all at the same time, and if we continue to do that, we have got to double our force. The extra men I had at Morris were picked up out there. We did the sorting and they helped us. We could not, however, depend on Morris Feed Yard employees all the time to help us. I sold 11 or 12 doubledeck loads at the Morris and Prospect yards last week and the week before. These sheep were bought, sorted out there, the feeders taken away from the fat lambs, and the feeders weighed out there. I do not sell that many cars each week. In September we did not have very many. Most of the lambs went to Denver.

The case to which I referred was an emergency case, one that doesn't happen every week. We don't hire extra men as a regular thing. I have not figured up my sales for the year. As a rule September and October are considered our good months. In September there was a loss in our business. Commissions did not pay expenses. Our business for 1931 was as good as that of 1930. The volume has been falling off in 1932. I am a member of the Leitch Sheep Commission Company. We hire one yardman and one bookkeeper who does the stenographic work also. Our expenses are reduced to a minimum. We have had this number of employees for several years except on occasions where we have an increased run. On such occasions we hire extra help. We have made no reductions in salaries and wages this year. We have made no such reductions since 1929. Our bookkeeper gets $25.00 a week and our yardman $40.00 a week. We have been able to affect no savings in our office rent. There has probably been some decrease in the cost of our stationery. It would not amount to much. We do very little advertising. We
1202 have had one advertisement in a small country newspaper this year. The only other advertising we do with our customers is to give them a book or a pencil whenever they ask for it. We have even stopped giving books. We go to the country occasionally but I do not think we do as much of that sort of work as a lot of other firms. We have never had a great deal of expense on this account and I think it is at a minimum

now. Our commissions have been reduced in *in* Tariff No. 3 which became effective May 23, 1932. I do not know the extent to which the new tariff has affected our business. I think it is around 10% reduction in revenues. Our firm handles sheep only. Some weeks the reduction would be 12 per cent; some other weeks it would be 10 per cent. I have not figured up our total loss, but it must be tremendous to have a loss in September when usually that is one of our biggest months. The decrease in revenue due to the new tariff is shown by our monthly statement. I make comparison each month with the year previous. I had something to do with the making of Tariff No. 3. There was no committee. Several of us were talking about reducing rates. We thought perhaps it was in line with everything. The sheep men got together three or four times and I attended about two of the meetings where we discussed the possibility of reducing rates and tried to get together on some kind of a schedule that might be logical. I agreed with some of the proposals and disagreed with others. The sheep men did not agree on what they thought would be fair rates. I talked with Mr. Gage, our attorney, and we figured out what the rate should be and what we thought was just at the time. I do not know how the matter was handled from that point on. Had conditions been then as they are now I probably would have held out for a higher rate. I did not know then how the changed freight rate was going to affect the fall business. If I had known that the volume of our business was going to be reduced as it was in September I certainly would have felt as though entitled to a little more money. With the Exceptions which I have disclosed my testimony at the last hearing would be applicable now.

CROSS-EXAMINATION

Within the last two years I have observed an increase in competition due to the establishment of small stock-
1203 yards at points in Kansas City territory, such as Sedalia, Parsons, and Joplin. The establishment of these stockyards has taken a lot of sheep away from the Kansas City stockyards. Our net profit has been 75% less than it was. Under existing conditions just as much help is required to do the work. Three separate individuals sell sheep for the Leitch Sheep Commission Company; Mr. Stover, Mr. Shuler, and myself. We are frequently all busy at the same time. I might be selling Colorado lambs, Mr. Stover possibly selling Kansas lambs, Mr. Shuler selling drive-in lambs. Mr. Shuler does yard work also. We make an effort to keep down expenses for business getting. We

do very little advertising. We used to give away books and pencils. We now give away pencils only. We do not have many men in the country many weeks in the year. We get out a market letter and attempt to keep the cost incident thereto as low as possible. This letter contains general market information and is requested by our customer. We revise our mailing list constantly. The Federal Farm Board has been active in the sheep business through loan companies and through the National Livestock Marketing Association subsidiary. They have made loans on sheep. This has affected our business. It does not necessarily affect the market receipts. It tends to divert our business to their agency here at Kansas City. It has actually done so. The yardage charge made by the stockyard company on sheep is 8¢ a head or $20 on a car of 250 lambs. We get as a selling commission $17.60 for selling them. We have to look after them in the feedlots, meet them when they come in, bring the owner in to Kansas City and take him out two or three times, and then sell them after we get them in here. At the present prices of sheep it is not necessary to have as much money in the business as it was three years ago.

I was on the market at Joplin, Mo., this spring or early summer. At that time a speculator there was buying all the sheep. There was no packer buyer on the market. The speculator brought all the lambs at $1.00 a hundred under the Kansas City market and loaded them on the cars for St. Louis. Most of the sheep from markets like Joplin, Springfield, and Parsons go to St. Louis. Sometimes they come to Kansas City.

1204 REDIRECT EXAMINATION

The Morris yards have been in existence about 25 years. The Prospect yards are something new within the last 5 years. The purpose of sending sheep and cattle to these yards is to let them rest and fill up before they go on the market and to give us a chance to distribute them properly during the week so as not to glut one particular market; to avoid just such things as happened at Denver today, 62,000 in one day—ridiculous. I should say that 99 per cent, nearly all of the sheep come from the feed lot to the Kansas City stockyards to be sold. Those sheep are mostly western and I am speaking about sheep that are being shipped to market.

The 99 per cent to which I referred above applied to sheep consigned to commission men on the Kansas City market. Sheep not consigned to commission men do not come from the feed yards to the Kansas City Stockyards.

Mr. Stover to whom I referred is my partner. Mr. Shuler is an employee. He is a yard man and helps out by selling truck-in sheep. Ordinarily Mr. Stover and I sell the sheep. Both of us are in the yard every day selling. We have a bookkeeper who is also a stenographer and we do the office work ourselves in the afternoon after our work is finished. We write letters, check account sales and help out in general with all work. We have stayed there until midnight to finish the work.

We do not have to wait two or three days for our money when we sell fat lambs, but when we sell to a man out in the feedlots, say at St. Marys, Kansas, or Garden City, we might have to wait three or four days. We remit on the day of sale or next day for feeder lambs sold even though we have to wait for our money, I should say that we have to wait in every case in which we draw a draft on a man. I should estimate that from 80 per cent to 90 per cent of the sheep we handle are fat.

RECROSS EXAMINATION

We have peak seasons as to volume and at different seasons different types of sheep are handled. The peak months are usually September and October. This year it will possibly
1205 be October. September was no peak month. Then in July we have the run of natives. The peak of the fat lamb run might be January, it might be October.

Mr. A. J. Mauser, a witness called by the Government, after being sworn, testified as follows:

DIRECT EXAMINATION

I am the same A. J. Maurer who testified on December 20, 1930, and December 24, 1930, in the former hearing in this case. I am still engaged in the same business and have been continuously engaged since my former testimony. My business was, at that time, owned individually by me and still is. I have no partner. I have read my testimony within the recent past, and believe so far as my testimony is concerned there has been very little change in conditions. So far as my business is concerned, there has been a change. The packers and railroads kind of played heck with a part of my business. We had the privilege of change of ownership here ever since I have been in business. This was changed on January 25 of this year. During the last few months, the amount of business would not show that this change has been a handicap, but in the last two months the change has exerted a considerable influence on the volume of

business. There have been many droves of cattle that I could have purchased and shipped East had I been able to secure the through billing. This week I could have bought at least ten or twelve car loads of cattle had I enjoyed the privilege of the change of ownership. This has happened practically every week. Some weeks the number of cars, which I could have bought, would be twice as many as this week. The big packers felt that the order buyers created so much competition for them on this market and other Western markets that they tried to get rid of us in a way. The packers apparently exerted so much influence on the railroads that they threw this change of ownership out. The Producers Commission Company had two loads of cattle which belonged to Mr. Charles Collins of Kit Carson, Colorado. I had bid six and three-quarters for the cattle with two out at a different price. That was all that any of the packers or anybody else had bid for the cattle. I was told afterwards that Armour and Company had bid 6.85 with eight
1206 or ten cattle out at a different price. I finally made the following proposition. If you will guarantee me through billing on these cattle, route them the way I say, and guarantee the way they go, I will give you seven cents a pounds for the the cattle plus the freight to St. Louis, which would be thirteen cents. That is, I would give 7.13 for these cattle delivered in St. Louis with four cattle at five cents a pound out. This made practically twent-five cents a hundred more for the shipper than he was bid by anybody else. I bought the cattle and paid for them on that basis. This cancellation of the through billing applies only when there is a change of ownership. The owner can ship these cattle on as often as he wants to. When an owner finds out he can go on to Chicago for thirteen or fifteen cents, if the market is a little mean here, it is a temptation for him to go on. In 1930 there was the worst drouth in Tennessee, Kentucky, and Virginia, that has occurred in forty years. People in the drouth striken area had to ship out practically all of their cattle. It was a foregone conclusion that during the year 1931 those people would have very few cattle to ship to the Baltimore, Lancaster, and Cincinnati markets. There was a drouth also in Ohio and Indiana. When the marketing period arrived from that section of the country, Lancaster and Baltimore, and those markets had to draw their cattle from the West. It created a very nice business for us out here had conditions been normal. That condition, in my opinion did not account entirely for the fact that I did more busineess in 1931 that I did in 1929. I have been ten years in building up this business, and I would feel very proud of it if I could not increase it as I went along. I have tried to

maintain a reputation that would encourage people to come to me I think that has had something to do with it, but the drouth condition had a great deal to do with it also. My business for 1932 will be smaller than it was in 1931. There are times though when it is just as much trouble to buy five loads as it is to buy forty loads under changed market conditions. There are days on which one can buy forty loads quite easily and there are days on which he finds it difficult to buy five loads at the price he feels he can pay.

In buying cattle, I deal with one salesman at a time. A salesman at a time. A salesman talks to only one buyer at a time. A salesman talks to only one buyer at a time, as a general
1207 rule. There are exceptions, however. If I were trading with one commission firm, and the representative of another should come up, he would say nothing to me unless I asked him what he wanted.

In spite of the fact that we did considerably more business in 1931 than in 1929, the expenses for 1931 were considerably less than those for 1929. Part of this was due to the fact that I let my hog buyers go. Outside of this, I do not know specifically how I cut my expenses. I had not reduced salaries or wages of any employees up to 1932. Since that date there has been some reduction amounting to 12½ per cent. This reduction applied to all employees except two and took place on July 1st, 1932. As a matter of fact I reduced the salary of one of these. He quit and I hired another one at the same salary he had been receiving. I did not reduce the salary of the employee numbered four in the audit. He was a hog buyer, but he always helped in yarding cattle. After we stopped buying hogs, I put him to buying calves and to yarding them. He yards in the cattle yard and when I have some hogs and calves to buy he buys them. My sheep are bought by another firm on a split commission basis. This is for the purpose of economy necessary on account of the low volume of sheep that we are buying. I could not afford to hire a sheep buyer. It would be necessary to have a certain volume in one's business before he could afford to pay the salary of a buyer to handle that species. The volume of sheep, at times, is sufficient, but it lasts only for a short time. The annual volume is not sufficient. In order to justify the hiring of a buyer on a profitable basis. I would have to have about three times the volume shown in the audit of my business. The packer has a definite idea of what he wants. The feeder does not. One will perhaps spend from two to five times as much time with a man buying stockers as he would with one who wanted to buy fat cattle. When I am buying for a packer, I have his order. I know what

he wants and go ahead and get it. When I am buying stockers and feeders, I often have my customer with me, and he does not know just what he wants. I have to do a lot of shopping around and showing.

CROSS-EXAMINATION

I would not consider it practicable for one firm to handle all the business. However, there wouldn't be as much dif-
1208 ference on one firm handling all the business, as far as the number of salesmen is concerned as might be imagined. One salesman can only consistently sell about so many cattle. If one firm handled all the business it would have to have practically the same number of salesmen as would now be employed by some of the larger firms. What a man can do depends upon variable market conditions which no one can forecast or foretell. A man you would hire would not be as efficient as a man who owned the business and operated it himself. I have always been on the buying side of the market.

What I said with respect to the salesmen of commission firms applies to buyers as well.

I have a substantial investment in farms and ranches. I had some financial success in my operations up until 1931.

I still use the telephone and telegraph facilities in keeping in contact with my customers. The telephone tax and the increase in postage and the tax on checks amount to several hundred dollars a year in my business. I did not have these expenses in 1931. I have tried to keep the salaries of the people I employ at a reasonable level. I do not believe that I have had a buyer, who has worked for me for several years, who could not have gotten more money from someone else if he had wanted to. One of my employees did get what he considered quite a raise.

The capital investment in my business as of December 31, 1931, was $56,283.63. I have to have that amount of capital in my business. I could not get along with less and handle it as I am doing.

REDIRECT EXAMINATION

When I buy livestock, I pay for it by my own check. None of the packers for whom I purchase furnish me with funds in advance. I use my own capital and draw upon my customers. I receive money on my drafts in from four to two weeks. I charge my customers ten cents per hundred exchange. It is really interest to offset the float.

I do not believe that there is anybody in the world that could tell you what the limit of one's ability to purchase cattle is because conditions change so rapidly and vary so much that one day I might be able to buy 100 cars and on another day

1209 I could hardly buy ten. There have been times when the market was right and when I considered the prices at which I could afford to buy when I have found myself unable to buy my requirement because there was not time enough in the day. Last Monday we had 28,000 cattle. I had orders for 30 loads of steers. I bought 12. There were plenty of cattle there, but the kind I wanted I could not secure at the price I felt was in line.

There have been a few times this year when I could have bought more cattle if I had had additional help. This is due to the fact that I could not cover the yards and see more cattle. The day of which I speak was not a heavy day. I should say it was under 25 cars. I have seen this situation arise on a normal market day. You could not get over the yards. You would be in one end of the yard and one thing after another would happen to throw you out. You would have bad luck. You would think that you would get a bunch of cattle and when the salesman went to see the owner, the owner would not let them go. On the days when I could not get around like I wanted to, I should say that my purchase was ten to fifteen cars.

There is a difference between a buyer and a salesman. The salesman works in one locality, the buyer all over the yards, but the salesman, if the market is dull, has to cover the market in order to find a buyer to come to him. On a bad market the salesman has to get out and hustle and use his ability and foresight to find a live buyer somewhere. It may be that the packers are all filled up and the seller wants to find an order buyer or a farmer who will purchase them for feeders.

When Tariff No. 3 was under consideration, I was called into an executive meeting by the Live Stock Exchange. I told them my rate for purchasing cattle was $15.00 a car. I told them I did not know what my competitors were charging. I found out later they were charging ten to twelve dollars a car.

CROSS-EXAMINATION

I made no objection to the order of the Secretary in the recent rate proceeding and filed no application for rehearing. The tariff filed by me was a copy of the tariff prescribed by the Secretary in his rate order. The tariff prescribes a maximum charge of $15.00 per car and I have applied the maximum in all 1210 instances. I have had only one man complain of my charges. He stated that one of my competitors would buy cattle for $12.00 a car while I was charging $15.00. I told him that I was sorry and if that was going to stop him I would have to lose his trade.

REDIRECT EXAMINATION

Inasmuch as I never ship less than in carload lots my rate for buying cattle is $15. per car, the maximum.

HERMAN C. HENRICI, a witness called by the Government, after being sworn testified as follows:

DIRECT EXAMINATION

I am a consulting engineer and employed by the Department of Agriculture in the Bureau of Animal Industry as chief valuation engineer. My office is located in Kansas City, Missouri. I have made a second appraisal of the furniture and fixtures of the market agencies operating on the Kansas City Stockyards as of August 1, 1932. I have here a report of the appraisal made as of August 1, 1932, of the furniture and fixtures of the market agencies operating on the Kansas City market. It is designated Government Exhibit 131.

Government Exhibit 131 was received in evidence.

CROSS-EXAMINATION

In some instances the automobiles owned by the firms were in the field. We took the word of the owners as to the location of those automobiles. We did not intentionally omit any automobiles. In every instance where the ownership or the use of the car was distinguished as between the business and the individuals in the business we were governed by the statement of the commission men. In firm No. 44 we included no automobile in the appraisal. We included no automobile in the appraisal of firm No. 46. These omissions are due to the fact that we had no knowledge of any automobile being used in the business. The statement of the commission men in each instance was to the effect that they did not have an automobile which they use in their business. I personally did not make these inquiries.

1211 It would have been possible for one man to make all the inquiries but not expedient.

REDIRECT EXAMINATION

The items of which we could have no knowledge were checked over with the commission men after the appraisal was made. If the furniture and fixtures were sold out of these offices as second-hand stuff they would bring a much lower price than the value at which they are appraised.

Whereupon the witness was excused.

At the former hearing Exhibits 19–A to 19–E were introduced showing the commission charges for market agencies operating at Baltimore, Pittsburgh, New York, Jersey City, Cincinnati, and Lancaster. Supplements to the tariffs showing changes in commission rates which have been made by the market agencies operating in the Union Stockyards at Baltimore, the Union Stockyards at Cincinnati, and the Pittsburgh Joint Stockyards were introduced. These supplements show the only changes which have taken place at any of the markets enumerated above.

HOMER G. BURNS, a witness called by the Government, after being sworn testified as follows:

DIRECT EXAMINATION

I am the same Homer G. Burns who testified in the former hearing in this case. I was in the employ of the Packers & Stockyards Division of the Bureau of Animal Industry of the Department of Agriculture at the time of my former testimony and have been continuously thus employed since the date of the former hearing. Since that time audits have been made under my direction of such of the firms previously audited as were in business in 1931. Some of the businesses audited for the year 1929 are not now being conducted at the stockyards. A few are now in business who were not in business at that time. The audits covering the year 1931 were made in the same manner and by the same method as described by me as having been used in making the audit for the year 1929 except that we relied considerably upon information contained in the re-
1212 port that the market agencies make to the Packers and Stockyards Division, known at P. S. 3. We obtained the basic information in most cases from P. S. 3. We had to relate this to the books and break it down for the matter of expense classification. That necessitated the use of the books and other data in the office. We did not check the information contained in P. S. 3 in all cases. We had to refer to the books to break down the various items shown in P. S. 3 but as to verifying P. S. 3 by the books record we did not go to that extent. This does not mean that there were any firms whose books were not examined. It was only certain items appearing in P. S. 3 which were not verified. For instance, revenues from commissions as set up in P. S. 3 were accepted in the first instance as being correct. Our tabulation of accounts of actual account sales, which was in detail in every instance, may not have verified the amount of commissions as shown on the P. S. 3. We found it necessary then to refer to the books and if the book entry was the same as the

P. S. 3 it in many cases necessitated a thorough check of the income account, that is, to separate the various sources of income. They may have had one income account containing commissions from selling, commissions from buying, clearance commissions and they may have charged against their income account split commissions paid, making the net entry in the P. S. 3 smaller than the gross income derived in the conduct of the business. In cases like that we found it necessary to go to the record, first the ledger, then the journal or account sales register.

In the breaking down of the classification of expenses we went to the books of original entry consisting of the ledger and supporting journals and the other memoranda in the office. As illustrative of what I have said, I shall take firm No. 1 as an example. We found very little authoritative data in the office of this firm to support from P. S. 3. He had in his office copies of this account sales which we tabulated to determine his gross income from application of the tariff. His salaries were determined from checking records and consultation with him. I do not think this man maintained a set of books that would give or permit of a classification of the expense in the manner that our instructions required so we had to rely on memoranda, check stubs, and information furnished by him in order to set up his expenses. There is no doubt but that he gave us all the ex-
1213 pense it was possible to load in. The memoranda and check stubs were records in his office. P. S. 3 has a classification for telegraph and telephone. In order to analyze the one large item on P. S. 3 or general miscellaneous expense, we sometimes found minor items of telegraph and telephone included in this general miscellaneous account. This necessitated our going back to the telephone and telegraph account and adding to it, or it might have contained credits that applied to that account so the blue audit might not exactly verify the P. S. 3.

We prepared a questionnaire setting forth each employee and his title as furnished by the firm, the amount of salary received for the period for 1931 and the number of months that he was engaged by the employer firm. We then assigned a man to determine the distribution of each individual's time according to the species or function of duty. He was assisted in this by the Secretary of the Exchange and we had full cooperation of the Exchange in securing this information. I feel sure that if there were any radical errors in that list of salaries it would have been detected after they were submitted to the firm. These questionnaires were returned to us after the distribution of each employee's time had been set out on them. This distribution was set out during the time of the checking between one of our subordinates and Mr. Stebbins, the Secretary of the Exchange.

When they had been returned to us I do not recall any major corrections. There might have been added in an instance or two commissions paid as salaries that were not listed on the questionnaire, but were in the audit or the blue audit. I did not use the questionnaire exactly as a basis for verifying the salaries stated in the blue audits but it did answer that purpose and should have brought out any error in the salary expense. The names of the individuals under my supervision in the preparation of these blue audits are contained in the statistical study, Government Exhibit No. 115. None of the employees listed in this exhibit are in Kansas City now so far as I know except Miss Bonzelle, Miss Hawkins, and Miss Fox, the latter two of whom are engaged in this hearing. These young ladies were tabulators. The others engaged upon this work have been assigned to other duties. The auditors have been assigned to make other audits, the clerical force may have gone to their headquarters or may have received other assignments since. I am satis-
1214 field that the instructions under which the audit of 1929 was made are practically the same as those under which the 1931 audit was made. I recall no material change.

In the year 1931 we included on Schedule 3 the statistical data with reference to owners, account sales or account purchases and drafts. I don't believe that that was included in the 1929 audit, however, we gathered the same information in 1929 and it was requested in the instructions to auditors. The inclusion of this information in the blue audit here at Kansas City is the first time that this has occurred. It was done here in order to expedite the submission of this information to respondent's accountant. This information was gathered in 1929 and shown in the work papers. The only difference is that it was typed and set up in the audit for 1931. In making the audit of 1931 we assigned the same identification number to each firm as we did in 1929. We gave new and higher numbers to the new firms that have gone into business since 1929. The order buying firms were given numbers beginning with 101 and ending with 107. Government Exhibit 115 contains an alphabetical list of the firms audited with their corresponding number and also a numerical list with the corresponding firm. These lists do not include the order buyers. The identification of the order buyers is as follows: Firm No. 101, A. J. Maurer; 102, Feaman and Nolan; 103, Rice and Kirk; 104, K. L. Peterson and Company; 105, B. C. Stanley; 106, W. F. Humphrey and Company; 107, Corrigan and Soeder; and 108, Graybill and Stephenson. The income of the latter firm arises principally from trading and a little from clearing other traders. Their audit shows no income from buying or selling livestock on commission. The information contained on

each of these so-called blue audits represents a summarization of more detailed information contained on the work sheets.

Government Exhibit

The blue audits were introduced in evidence and numbered as follows: 114–1, 4, 5, 6, 7, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 23, 25, 26, 29, 30, 33, 34, 35, 36, 37, 42, 43, 44, 46, 48, 51, 52, 53, 54, 55, 56, 59, 60, 61, 62, 63, 65, 66, 67, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 82, 83, 84, 87, 88, 101, 102, 103, 104, 105, 106, 107.

1215 It was stated by counsel for the government that all those, except clerks heretofore named, had been called to other places to pursue their official duties, but that if any of the respondents desire that any of those subordinates be made available for questioning respecting their work, they would be made available at the hearing. Respondents objected to the offer as made to all the so-called blue audits or exhibits so identified by reason of the failure to identify properly each and every one of the blue audits under the testimony of this witness and because of the claim that the testimony shows that the audits in and of themselves were based on evidence extraneous to these exhibits; namely, the PS–3 report and that it is impossible to ascertain, under the testimony of the witness, what portions or particulars of the blue audits, as outlined in the report PS–3, were relied on, and as to what portion or particulars of so-called blue audits, examination of books, ledgers, accounts, or documents of original entry of the respondents were relied on and for the reason that the testimony of the witness with respect to the only one of the audits particularly specified does not show what expenses from the books were loaded into the audit. The form PS–3, concerning which the witness testified, is the annual report which each of the market agencies makes to the Secretary of Agriculture, and it is signed by some owner or employee connected with the market agency. It is certified as a record taken from the market agency's books. It is my understanding that the Secretary of Agriculture has the authority to request this report of each market agency. No blue audit was made of any firm on the basis of information contained only in Form PS–3. We accepted the amount of money involved in an item in no case because it was in PS–3. We verified it from the books and records in every instance.

CROSS-EXAMINATION

At the time of the last hearing, the Secretary of Agriculture had not prescribed any standardized method of accounting or

bookkeeping to be followed by market agencies then respondents in that proceeding. I know of no order or regulation of the Secretary that prescribes that market agencies, at this or any other public stockyard under the regulation of the Secretary of
1216 Agriculture, shall follow standardized methods as to the segregation of income or expenses incident to the transaction of their business. The Packers and Stockyards Act says that they shall keep good and sufficient records.

With respect to firm No. 1, I mentioned, I had no intention of saying that the gentleman loaded into the audit any unnecessary expense. What I intended to say was that, even though with the absence of books and relying on his check stubs with insufficient memoranda of them, it was possible for him to get in all of the expense applicable to his income. There was no respondent, to my knowledge, who did not maintain a checking account and have stubs available for my inspection. Check stubs are the source of original entry, if supported by proper memoranda. Firm No. 1 listed $60.00 under Exchange Assessment. There is no other expenditure in connection with the Livestock Exchange noted on the audit. The Exchange assessment, in that case, may be the straight membership assessment or it may be the amount that he paid as per-car assessment. The records indicate that Firm No. 1 was in business from January 1 to December 31. He handled some sheep. I do not know whether this man was a member of the clearing house. If he was, there is no item of expenditure on account of it. Assuming that he paid during the year to the clearing house association the usual monthly assessment of $3.00 per month, or $36.00, and also paid a per-car assessment of $35.50 on his livestock, I do not see where those expenses could appear on Exhibit C. Exchange assessments and dues were grouped in these exhibits. The instructions may have been changed in that respect to the setting up of this item, or it may be that we did not have time to make the detailed analysis of the Exchange expenditures, or again we may have been relying on the possibility of securing that from the Exchange in order to apply that analysis against the gross expenditures made by the firm and the Exchange.

Mr. J. H. MERCER, a witness called by the Government, after being sworn, testified as follows:

DIRECT EXAMINATION

I am the same J. H. Mercer who testified on December 12, 1930, in the former hearing in this case. I was then and

1217 I am now livestock commissioner for the State of Kansas and secretary and general manager of the Kansas Livestock Association. I was and am a producer of livestock and have livestock on hand at this time.

The livestock industry is in a much less favorable condition today to pay its marketing costs, or any costs for that matter, than it was two years ago. Prices are lower. This, coupled with all other correlated business on the farm, has produced a condition in the industry much worse than it was two years ago. This applies to the entire livestock industry—producing, marketing, slaughtering, and packing. I am not as conversant with the costs of other branches of the industry or the conditions of the other branches of the industry as I am with the producing branch of the industry. The condition of that branch of the industry is much worse now than it was in 1929. It would be difficult to describe the difference between the situation in 1929 and now. The condition in the livestock producing industry now is so serious that it is difficult to analyze the methods of meeting the situation. Marketing charges such as freight to market, stockyard, and yardage and feed charges and commission charges, the same now as in 1929 would have a much greater depressing effect than they did then. The industry was in very good condition in 1929, generally speaking. The burden of market costs today would be far greater than at any time since my former testimony was given. More than 50% of the livestock sold at the Kansas City stockyards originates in the State of Kansas. This applies particularly to cattle, and perhaps hogs. I do not know that it would apply to sheep. I know of no business that is as profitable now as it was in 1929. Salaries and incomes have declined somewhat but the percentage of decline as compared with the percentage of decline in the values of livestock and all other farm products is small. I know of some businesses that have suffered almost as much as farming. I think our public markets are essential. For a good many years we have had quite a large diversion of shipments to direct killing plants. I think that is harmful to the producing end of the industry. It is obvious that the packer would not participate in such a class of business if it was not to his advantage. What the packer pays on these direct shipments is based upon the market value at the public market. It is easy for the livestock exchange merchant to say that his business is be-

1218 ing conducted at a loss, but when he realizes that his patrons have become almost insolvent because of a decline in the value of their livestock, it is time for the commission merchant to face the fact that he must make concessions even though

it be to his own disadvantage. These concessions would be reduction in costs, cooperation, working more closely together, consolidation of the business, elimination of unnecessary concerns. I am of the opinion that in time it will work itself out but it is a serious situation with our people to have to pay any cost above the lowest possible level. It is not possible for some of them to make it and if they can eliminate the yardage and commission charges by sending it to some killing establishment without going through the public markets they are apt to do it. They would not do it otherwise if it was not for the depressed conditions.

Producers are taking advantage of transportation situations that have come up and go around the public markets. They get a through rate to a foreign feedlot or a lower rate by passing around a public market. All these things have been disadvantageous to the public market so far as the maintenance of efficiency is concerned and have been to the disadavantage of those engaged in this business. You cannot eliminate this condition by discussing it. The livestock producers industry is in such a distressed condition that a man who can save ten or fifteen cents a hundred or a head tries to do so whether it is to his advantage or not, and my present opinion is that it is to his disadvantage. I feel that the public market is the proper place at which to merchandise livestock provided we can centralize the competing forces so as to create better competition.

In my former testimony, I commented upon the fact that there were more people engaged in the selling of livestock on commission on the Kansas City stockyard than the business could support. I don't think that so far as the increase in number is concerned that it has been any worse since that time. I think there are fewer commission men on the market, but the condition that has made it worse is the diversion from the public markets of livestock into other channels. The commission men do not get the volume that they used to. The volume of business is what means revenue to the Livestock Exchange man and the yard company. When business drops off the revenue drops off and
1219 those diversions have lessened the necessity for so many agencies on our public markets. There is no question about it, and "there has been some less." I do not think that the decrease in the number of people engaged in the commission business has kept pace with the decrease in the volume of livestock to be handled. I do not think it has kept pace with the necessity of restrictions of the number of concerns that operate on the public market.

In my opinion it would not require any greater personnel of salesmen and yardmen to handle a given number of livestock arriving at market now than it would have required to handle the same quantity and quality of livestock arriving in 1929.

CROSS-EXAMINATION

During the last eighteen months or two years of depression, it has been difficult for all branches of business and industry to adjust themselves to reduced volume. This statement applies to the livestock industry, the livestock producers, and the farmers. The statement has been made, especially in newspapers that there are too many farmers and too many wheat growers. I have seen a few make that statement to us, not very many. My statement with respect to the necessity for the control of and the restriction of the number of market agencies on a public market, to which I made reference in my former testimony, and as to which I have testified in this hearing, was made on several occasions prior to my testimony in 1930. The opinion which I expressed is the opinion of my organization. It is my own strong personal belief and the belief of the organization I represent that there ought to be some manner of control or restriction over any agencies entering the business where they were not needed. I am a strong believer in competition in the buying and selling of the products of the livestock industry. The competition of the commission merchant is not in respect to the charges he makes but in the service he renders. He competes on the ground of efficiency of service very largely.

Surpluses earned under the cooperative plan of marketing are refunded to the members. The cooperatives, generally speaking, sell at the same fixed rate of commission as the non-cooperative agency and, in so far as earnings or revenue are concerned. The important factor is volume of business.

1220 There is a difference and a variability in the comparative efficiency of different market agencies on a given market. I have some knowledge of values of livestock, and I have some knowledge of its condition, and I know that we have agencies that would apply to the cooperative agencies as well, which are not conversant with the business they are conducting. They do not know values as they should. The first requirement of an efficient salesman is his ability to judge accurately and appraise accurately the quality of the livestock he sells. I have been familiar with the livestock industry for forty odd years. I am strong for our public markets. I believe in them. I believe that the public market is the only method and scheme we can devise now, or that has been devised, that creates a practical and sound channel for the merchandising of our business.

I have also come up through these years and noticed the methods by which the sales agencies have been formed. I have paid pretty strict attention to the buying side of the industry so far as the packing side is concerned. I think the livestock sales business is on a much higher grade. I think a high type of people is engaged in it. A good many of them are well versed in the business compared with what they were a few years ago, yet I think there is plenty of room for correction yet. I do not think that any sales agent should be permitted to set up a desk in any room and say, "I am a livestock commission merchant," as he can do now and has been able to do during all these years. There ought to be some way of restricting him or requiring him to prepare himself for the business. If we are to have the controlling force of Government, it should lend its efforts in that direction. I have given this testimony a good many times in a good many places. I have testified directly on that particular subject before the Senate Committee of Congress. I have testified before some of our State Committees as well. I have not seen the situation relieved by additional legislation or administrative action of any kind. I have at various times and at various places stated my opinion as to the undesirability of direct purchases of livestock by packers whose plants are adjacent to and connected with the public markets. I can observe no
1221 change of consequence with respect to direct buying. Some changes may have come in some localities, but none of consequence. I do not know that it can be corrected except probably through legislation. Decisions of the Interstate Commerce Commission have eliminated and driven away from the public markets shipments that otherwise would pass through them. The change of ownership at the public market has been in vogue in this country since I was a young man. It was eliminated by a decision of the Interstate Commerce Commission in June 1931 to become effective in January 1932. This is harmful to the business of the public market and is a detriment to the producer. I think it will be corrected, but it will take some time. This regulation diverts livestock from the public market. This is harmful not only to your livestock commission business, but also it is a demoralizing influence on prices. If you are going to have control of an industry and regulate it, there should be no half way reasons about it. Such a procedure destroys one's usefulness. It destroys the faith of the people you are serving, and creates difficulties in getting Congress to listen to sane matters. I urged upon Secretary Jardine to take some action, and I think he would have done so, if he had not been advised that he could not do it under the Packers and Stockyards Act. You gentlemen know it is a hard matter to get Congress to change this

Act. We have tried it in many instances. Tried to get the law strengthened and changed, but influences from some source have prevented it.

At the last session of Congress, a hearing was had before a committee of Congress at which representatives of the Exchange recommended some of the changes you advocate.

I have very fixed opinions about the existence of three markets in the neighborhood of Kansas City instead of one. There are certain services that distributing stations and feed stations, such as the Morris and Prospect yards, can render. Such yards should have no marketing rights so far as they relate to the general public marketing business. It is only recently that an advantage over the public market has been given them. A producer cannot be blamed for selling his cattle at the Morris or Prospect yards, if some trader comes along and offers him a price above that which he can obtain on the public market because the railroad rate on the shipment has a different standing
1222 at the Morris and Prospect yards from what it has on the Kansas City market.

The existence of such privileges as exist at these outlying points and at such small markets as those at Springfield, Sedalia, and Joplin, and denied to larger central markets, like Kansas City, constitutes an obstruction in the normal flow of commerce through the great public markets like Kansas City.

The Kansas City Livestock Exchange has been interested in the activities of the National Livestock Meat Board. We regard the National Livestock Meat Board of tremendous importance to the meat industry in carrying the message from the producer to the consumer. The Kansas City Livestock Exchange has been one of the most active cooperators with the Board.

The Exchange, since 1929, has cooperated in the sanitary work of the livestock industry. The exchanges at St. Joseph, Kansas City, and Wichita have cooperated. The work done by the Kansas City Exchange has been very helpful to the industry. It is a well known fact that business transactions on our public markets are probably the most dependable of any other class of business. Business transactions of great magnitude are consummated by a nod of the head or by a crack of the whip, and seldom is there any misunderstanding about deals. I have no knowledge of any actual loss suffered by any purchaser because of a defect in title to livestock.

Commission men operating on the Kansas City stockyards are not permitted to act as both seller and buyer of the same cattle. A commission firm representing a buyer may purchase from a trader livestock which that commission man had sold

that trader. The commission man could not represent the seller and the buyer in the same transaction.

REDIRECT EXAMINATION

In my opinion the privilege of change of ownership of livestock at the feed yards is detrimental to the producer's interests in that it gives a preferential consideration of rates by reason of consigning it to those outside of the market points over the public market.

HOMER G. BURNS, a witness called by the Government, having already been sworn, testified in substance as follows:

1223 CROSS-EXAMINATION—Continued

I assisted Mr. Bachmann in the preparation of the statistical study of costs. I did not observe any adjustment made to reconcile the exchange assessments with the blue audits. On page 24 of what will be called Government Exhibit 115, for Firm No. 1, under recapitulation of business-getting-and-maintaining expenses, is an item of $60 for exchange soliciting and membership dues. That is in accordance with the blue audit which is Government Exhibit 114–1. To my knowledge no adjustment is made of this item in proposed Exhibit 115. Firm No. 1, according to Government Exhibit 114–1, had 99 cars of sheep, from which he derived selling commissions. At 25 cents a car, 99 cars would produce $24.75. The clearing house charge of $3 a month for the 12 months would produce $36. For this firm, postage is not separately listed. It may be in stationery and office supplies. In the audit of this firm there are no items of expense covering insurance, compensation, theft and liability; errors, adjustments and refunds; taxes, bonds, legal and auditing; depreciation on furniture and fixtures; office repairs; general office expenses; automobile expense; and automobile depreciation. We have included depreciation for furniture and fixtures. I do not know whether this firm really had any expense for these items. We gave the firm ample opportunity to include every item of expense that it had in connection with its business. We gave it opportunity with the very poor records that were available to apprize us of any expense of any nature which it had in connection with its business. I did not mean to infer when I said that he had an opportunity to "load in" expenses that he attempted improperly to charge up items of expense. We did ask him for any expense of any nature, and the result of that and what he produced to convince us of his expense is reflected in this blue audit, Exhibit 114–1. I would hate to

think that a man in business would not be able to give us proper evidence of all his expenditures. It may be true that he failed to call attention to some expenses, but he certainly should be able to enumerate all the expenses in connection with his business.

I know that every registrant is required to give a surety bond and that a premium must be paid to the surety company. There is no item of expense for premiums paid on bonds. I
1224 know it is possible that some insurance company may be carrying him for that bond and the premium has not become an actual expense item. The volume of business of this firm is very small. With the allowance of $2,400 a year as owner's compensation for 1931 there was a net loss with the expenditures which we did include of $961.92. Schedule 2 shows his office salaries to be $55 but that does not necessarily mean that that is all of his office expense. The questionnaire may have applied some of the owner's time to office, even though he is designated here as selling sheep. I would think that he could keep excellent records without the expenditure of any additional money for office help. He did have copies of all his accounts sales in the office. He did keep a record of his accounts sales and the receipts that passed through his hands for the sale of livestock and the disposition that he made of the proceeds of sale. There were check stubs, but we did not determine whether they represented all of the disbursements of that account.

The answer which I gave to the question at the former hearing with respect to the expense of keeping records of costs as to the performance of the separately rated services still stands, but that has no application whatever to the keeping of a so-called set of books to determine the net loss or the net gain from the operation of the business. That has to do with cost accounting. The fact that they are losing money, in my estimation, would necessitate a better record to determine where the loss was occurring. Auditors do not like to work without pay, but that would not have any bearing on the management of the firm and their desires in connection with the business.

What is true with respect to Firm No. 1 as to the noninclusion of items of expenditures does obtain in a very few cases. I think that the majority of the firms at this market had sufficient records to set forth all of the expenses incurred in their business. This Firm No. 1 is quite an isolated case. I have only one other firm in mind and that is Firm No. 4. Firm No. 43 had not posted its books for a period of approximately nine months. Their failure to keep up the posting at the current period may have resulted in some confusion or error in classification.

Another firm was No. 67. The owner of that firm having died sometime during the period of investigation the records were destroyed or misplaced. I feel sure that we got only a
1225 portion of the expense accruing against the income for the period that the firm was in operation. These are isolated cases. Most of these firms had ample oportunity to apprize us of all expenses in connection with their business and had records in support thereof.

The term "exchange-soliciting" originated on another market and had not got out of the minds of our auditors engaged on the work here. The location of the expense on Exhibit C would have no bearing on its ultimate use or perhaps in the statistical study. We understood the full nature of the exchange expense. Under the title of "exchange soliciting" we exclude all of the exchange assessments for whatever purpose made. I have no particular reason to be acquainted with the schedule of charges that was in effect at the time the proceedings started. I had occasion to be more acquainted with the schedule that was in effect during the period under which we were making our audits. I was naturally acquainted with the tariff in effect covering the period we were investigating, but whether it was the same one time or another I really do not know. I am not acquainted with the tariff prescribed in the Secretary's order. I have read the order which became effective May 23, 1932, and have questioned various individuals about it. I am sorry to admit that I still do not seem to grasp it. I am unable to understand the full application of it.

Exhibits 114 apply and cover the year 1931. This tariff was effective in the year 1932.

I have no individual firms in mind which spent less than 50 cents per car for yarding salaries and expenses.

We determined the compensation of the owners from their book records, and it is supported in most cases by the work papers. The time would be indicated by the salary basis and the number of periods it was paid. The total was determined from some one in authority for that firm. I am making no effort to testify for the Secretary's salary basis. I am only confining my testimony to the audit under Exhibit 114. I do not believe that you will find on any one of the Exhibits 114 that we set the profit up as salary, unless it was so accepted by the firm or its members. We did not eliminate anything. An owner's compensation could be the direct result of a salary charge or the net result of operations. In the audit, Exhibit 114–5, there
1226 is no salary set up for the owner of that business. There was no salary expense which I included for this firm in determining the net profit.

Assuming that there had been set up in the exhibit as compensation to that particular owner, he being a sheep salesman, a salary of $4,500, the next profit remaining would have been $81.98. As it is set up in the audit the net profit appears to be $4,581.98.

There is not included any compensation for the owner of Firm No. 9 in determining the net profit of $1,572.62. The audit shows that the owner of this firm devoted 12 months of his time to the business. Unfortunately, his function is not stated here, but it must have been on the questionnaire. There is no compensation included for the owner in the case of Firm No. 11 in determining the net loss of $452.95. The audit shows that he devoted five months' time to the business. I did not include any compensation to owner or owners in the case of this firm 12 in determining the net loss of $2,332.66.

There is compensation included for owners with respect to Firm No. 17. The amount was $4,580. It is evidence that I did not use the standard of compensation set out in the Secretary's order. I took the facts as the books reflected them. If that is all the man thought his services were worth for handling that volume of business all well and good. I had nothing to do with what the man's services were worth, and I did not assume anything in regard to that. It is not a matter of assuming what the man thought about his services. I was not interested in that. If I had accepted $5,000 a year for one of these men and $3,000 a year for the other, the loss would have been increased. Under the set-up which I made there was a net loss of $4,900.

On Exhibit 114–26, I show a net profit from the operations in 1931 of $6,231.56. There was not included with reference to firm 26 on Exhibit C any compensation to owners in determining the next profit. It shows that one of these gentlemen was selling cattle 12 months and another was selling hogs for 12 months. I had not considered the value of their services under any circumstances or what they thought they were worth.

I did not include any compensation to the owner of Firm No. 51 in determining the net profit of $17,703.78. Schedule No. 2 of the audit shows that this owner was engaged in
1227 selling hogs for a period of 12 months. Exhibit D of this same audit shows that he withdrew $20,441.73.

With reference to Firm No. 54, there was no salary for owners included in the profit-and-loss statement in arriving at the net profit of $23,803.57. The supporting schedule for Firm No. 54 does not show that the owners rendered any personal service in

connection with the operations of this firm. I have no reason to doubt the correctness of that schedule.

There is no compensation for owners included in the exhibit for firm 65. It shows a net profit of $5,249.70. The schedule statement of salaries shows one owner selling cattle twelve months and the — owner inactive twelve months. The work papers show that the second owner is Mrs. Moffett and that she was inactive. They show that she withdrew during the year $1,018.58. My own information about her activities is that which is disclosed by these working papers.

There was no compensation for owners included in arriving at the net profit of $265.12 for firm No. 78. The salary statement does not show that the owner devoted any time to the business during the year. In the absence of the questionnaire I can not determine whether there was any time devoted by by this owner to this business. The owner is Mr. Walter G. Land and I don't believe I am acquainted with him. There was no compensation to owners included for firm No. 79 in arriving at the net profit of $2,273.53. The statement of salaries shows that the owner sold cattle twelve months. Firm No. 88 has no salary expense whatever indicated on Exhibit C in arriving at the net profit of $144.89.

These exhibits which have been referred to are not typical of the others because they seem to be selected cases where the owners have not set up any expense for their personal services. There was included for firm 13 salaries for owners amounting to $10,200. The statement of profit and loss shows no net income and there were three owners, one selling cattle for twelve months, $3,570; another selling cattle for twelve months, $3,570; and the third owner in the office for twelve months, $3,060.

For firm 15 there was included salaries for owners, $6,886.62. The net result of operation on the profit and loss statement 1228 was zero. Schedule 2 for that firm shows 2 owners, 1 selling cattle 12 months, $3,443.30, and the other owner selling hogs for 12 months, $3,443.32.

There is uniformity of the principle in the treatment of these audits. There was lack of uniformity in the amount involved. Naturally there is a lack of uniformity in the results produced. Some of the things that reflect in the difference in the net result are the fact that the owners of some businesses either drew no profits out or had nothing to divide, or if they drew out compensation for their service drew it out at the end of the year instead of monthly, while other owners had fixed drawing accounts and the fact that other owners may have divided the net returns monthly.

The matter of owners' services might have been overlooked by the parties in authority in the firm. We certainly made requests for the information.

There is automobile expense included in 35 of these audits, there is no indication of automobile expense for firms Nos. 1, 6, 11, 13, 15, 16, 20, 25, 29, 33, 37, 43, 46, 52, 54, 56, 60, 61, 63, 65, 66, 67, 72, 76, 79, and 83. That does not mean that these remaining firms did not have automobile expense. They may have hired automobiles, the expense of which was included in their travel expense.

The gross amount or the net gain of all agencies referred to in exhibits 114–1 to 88, inclusive, was $56,742.29. That was without any additions or any deductions on the profit and loss statements of the various firms as shown in the exhibits 114. That includes 61 firms.

It may be true that nothing was set up as representative of owners' compensation in the case of some 13 of those firms. I do not know what the income of these firms would have been under the Secretary's tariff contained in the order of May 18, 1932. The consolidated information in these various audits in my opinion would have to be supplemented with additional information taken from tabulated sheets and the work papers in making an application of the tariff prescribed by the Secretary in his order. We have the individual work papers here. I have never calculated that or made any effort to test the tariff in any way. I have never made any effort to test the tariff in effect when I made the audit or any other tariff. I do not know whether the audits and working papers contained sufficient data to enable me to apply the tariff No. 3 which became effective May 23.

1229 Under any circumstances whether I took a small portion of data or not, it would require considerable time to make the test. I have never attempted to make even a limited test of the tariff.

I find that it is impossible for me to associate the respective firms with the graduated expenses as classified in the Secretary's findings as now before me from any data that I have in my possession or that is available to me. I believe the record of the former case with all the exhibits is on the table before me but whether the calculations of the Secretary's findings are based identically on those records, I don't know. I did not write the order and I do not know who did. The same applies to the findings set out in subsequent paragraphs 117, 118, and 123. I have not received any instructions to classify costs or functional costs in the manner in which they are classified in these paragraphs of the Secretary's order to which reference has been made.

REDIRECT EXAMINATION

I have had no experience in testing the proposed or prescribed schedule or rates and charges to determine the revenue it would have produced in a given year.

The loss of $4,946.41 under the item "Bad Debts and Accounts Adjustments" arose from the speculative operations of an employee of the firm which developed unfavorably. He speculated on his own account and was financed by the firm. My information is based on the work papers covering the audit. The individual was a former employee who was speculating for his own account and was financed by the firm. The working papers simply show that the firm financed this employee's speculation.

In stating the net profit of all firms, I deducted from the total gain of all firms, the total loss of all firms as shown on page 13 of proposed Government Exhibit 115. Those figures of gain or of loss were arrived at after allowing as an expense of owners' salaries which were set up in the blue audits. The amount of owners' salaries included as an expense was $373,156.20. The total net owner income for all firms shown on page 13 was $429,898.40.

RECROSS-EXAMINATION

With the elimination of Firms Nos. 10 and 36, the net gain of the remaining firms covered by the blue audits would be $45,107.44 for 1931. Eliminating Firms Nos. 10 and 36, the gross income under the tariff then prevailing was $1,709,989.48. The net profit for the year 1929, eliminating Firms Nos. 10 and 36, was *was* $143,171.81, and the gross income was $2,104,510.88. As to those firms, the reduction in 1931 gross income, compared with 1929, was $394,521.40. That is between 18 and 19 per cent. Reducing the gross income of the firms covered by the blue audits in 1931, with the exception of Nos. 10 and 36, by ten per cent would leave a gross of $1,538,990.53. Reducing the gross income of the firms under consideration in the year 1931 by ten per cent would result in a net loss amounting to $125,891.51. Eliminating the two firms mentioned, the net owner income was $418,263.64. The net return to owners is based solely on the blue audits and does not consider any interest on the capital investment. The depreciation shown on the blue audits with the exception of firms 10 and 36, was $3,986.60. Eliminating firms 10 and 36, the depreciation for the year 1931, based on the appraisal made by Mr. Henrici, according to the cost study, would be $12,414.75. That is an additional expense of $8,428.15 over the figures taken from the blue audits.

The auditors under my supervision did not make an application of any tariff to the business of these respondents. I was present all the time during the preparation for this hearing. A fair test could be made of the tariff of May 23 as applied to the business for 1931. This can be done from the information contained in the blue audits and working papers. The blue audits and working papers do not disclose any information with respect to the weight of livestock. An exact application could not be made. The result would be in the nature of an estimate.

As to naming those firms which did not keep sufficiently definite memoranda for us to classify all of their expenditures, if it came to an exact application of that statement I could name all of the firms, because they did not keep the memoranda supporting the expenditures in every instance. We rely a great deal on their classification and distribution of that through their various journals and ledgers. I am sure that there are very few firms that have full memoranda in support of all expenditures, and I am almost positive that their handling of petty cash will disclose that in practically every firm. By "full memoranda" I mean a full explanation of the nature of the expenditure. Travel is another item with which we experienced lots of
1231 difficulty. They will take $100 for instance and charge it to travel and there will be no detail whatever of the nature of the distribution of that $100 in travel expense. By "distribution" I mean the distribution of the funds for some particular service pertaining to travel. In the case of Firm No. 1 there was nothing in the records that would permit us to get an idea that the man had those expenses or how they were accrued. I do not know that this firm gave a bond to cover the requirements of the Packers and Stockyards Act. I do not know of another instance where we were unable to get the bond premium or the exchange dues.

REDIRECT EXAMINATION

In giving the net profits and net owner income of respondents as a whole, Firms Nos. 101 to 107 inclusive were not considered. Unless the auditor misinterpreted the instructions there would not be a stockholder of a corporation appearing as a non-owner.

Government Exhibits 114–1A to 114–107A

RECROSS-EXAMINATION

I personally had nothing to do with the preparation of these last exhibits that were introduced except the supervision.

REDIRECT EXAMINATION

By "order buyers" I mean Exhibits 114–101A to 107–A. I myself made 101, 106, 107. Mr. Bachmann made the others.

(Whereupon, the witness was excused.)

MR. JOHN J. BACHMANN, a witness called by the Government, after being sworn, testified in substance as follows:

DIRECT EXAMINATION

I am the same John J. Bachmann who testified at the previous hearing as chief accountant for the Packers and Stockyards Division. I still hold the position of chief ac-
1232 countant and have held it continuously since that time.

Since that time I have been engaged in two stockyard audits and rate cases. I have been engaged in commission rate cases in St. Joseph, Missouri; St. Paul, Minnesota; National Stockyards, Illinois; and Chicago, Illinois.

I was in general supervision of the audit made of the books and records of respondents in this proceeding covering the year 1931, the same as I was in the proceeding covering the year 1929. A study was prepared on all of those firms included under the numbers 114–1 to 114–88. No statistical study was made of the order-buyers, being those numbers in the blue audit 114–101 to 114–107. I have a copy of that statistical study of operations covering the year 1931.

(Whereupon, a copy of this study was marked for identification as Government Exhibit No. 115.)

The fundamental principles underlying this study are the same as those underlying Government Exhibit No. 15 which I described in my former testimony in this case. There were some minor changes in form, some variations in the set-up, and there was one change as to cost. We have eliminated from the functions included in the study items which can be classed as risk items and added that additional function. We have added the function of risk, and the items which are classified under risk were, in the previous study, included under other functions.

The country commissions were included in the blue audits for 1931, but were eliminated from the statistical study of operations. I do not believe that expenses for charity and donations were eliminated in my 1929 study, but I stated that they should be eliminated. On page 15 of this study they are eliminated.

In the study of 1931, we adjusted insurance covering workmen's compensation, mortgage, and theft, furniture and fixtures, and public liability. The first three were adjusted on the basis of the rates used by Mr. Roberts in his cost study of 1929. The

workmen's compensation insurance covered only non-owners' salaries. The public liability insurance was adjusted on the basis of the allowance made by the Secretary in his order. There was an additional adjustment by way of salaries. In those firms in which no owners' salaries were shown on the blue audits,
1233 we took the profits wherever we found profits and added them on to the expenses for salaries. We have done that with the feeling that it is better practice as far as a commercial cost study is concerned, without having any idea in our minds as to whether or not this is a fair measure of their work. In other words, we are not passing on the question as to whether or not this was a proper allowance for owners' salaries in a rate proceeding.

The blue audits show the insurance expenditures just as they were set up on the books of the respondents. In our cost study we did not use those exact figures, but an adjusted figure. That was on an accrual basis rather than on the basis of what was actually expended. We applied the various rates that I have described, even though the blue audits did not indicate in all cases that such expenditures had been made. From a general economic viewpoint a man is worth no more than he can make. From a rate making viewpoint, I don't know whether the drawing accounts are any indication of the value of the services of the owners of the firm. There is nothing to prevent the sole owner of a commission firm from setting up any salary that he may choose to set up for himself on his books. I could set up $100,000 as my salary, and if I only earned $1,000 a year I could pretend that the business owed me $99,000.

The figures shown on page 24 in the column headed "Exchange Soliciting and Membership Dues," were taken from the blue audits after the elimination for the insurance on the life of the members had been made. On checking over some of the firms we felt certain that all of the amounts paid to the exchange had not been included. The matter was discussed between the secretary of the exchange and myself as to the best manner of proceeding to have this additional expense included. The time was too short to get it into the statistical study. I suggested that he make an analysis of the income of the exchange by firms and submit those figures to us, and we would put them in the record in the form of an exhibit supplementing this study. He returned with the estimates of the amounts *of the amounts* which the various firms had paid to the exchange, and on checking over these estimated figures with some of the firms which we felt had maintained accurate records, and noting that the estimated amount did not agree

with the amount shown on the books, I informed him that
1234 I could not accept those figures unless I could audit them.
I informed him also that I would present the estimate which he had given me at this hearing for such action as might be necessary. That record was turned over to the exchange with the other work papers and it apparently has not been returned to me. That study did show that on the estimated basis the exchange soliciting and membership dues were approximately $6,000 greater in amount than we show here on page 24 of Government Exhibit 115. I was not given an opportunity to check that estimate against the books and records of the livestock exchange. The exchange soliciting and membership dues here are classified under business-getting and maintaining expenses. That items covers the charge for the running expenses of the exchange, radio, the rate hearing, and possible some other items. The proportion of that expense for radio and for the time of the secretary spent in broadcasting and getting his information together for broadcasting is, in my opinion, a proper business-getting and maintaining expense. Other parts of this amount may not be properly classified under that heading. We had no way in which to make that analysis so that we could classify this expense under its proper function without a fairly complete statement of the expenditures of the exchange. I felt certain that in instances the estimate was not accurate. I checked firms for which I felt accurate records were kept, and I found that the amounts did not agree as between the books and the estimates. For that reason I felt that I could not accept those figures absolutely, without further examination.

Only one firm carried public liability insurance.

The methods of distribution used for indirect expenses have not changed since the 1929 study. The risk item which was not included in 1929 was distributed on the basis of head times value of the particular species. The value of the species was taken from the Government records in the Bureau of Agricultural Economics. Forty dollars was used for cattle and calves, twelve dollars was used for hogs, and $5.50 was used for sheep. The records I refer to were taken from the yearbook of the Drovers Journal of Chicago and are reported by the United States Department of Agriculture. For 1931 all cattle had a value of
$39.71 a head, hogs $11.66 a head, and sheep $5.35 a head.
1235 This calculation gives us a ratio. The reason we did not go into the books to get this information is that the time which would have had to be expended in getting it would have been quite lengthy. The information was not worth the cost of getting it if we could get information which was reasonably sat-

isfactory in a much faster way and from a fair and reasonably accurate source. The amount of indirect risk expense in comparison to the total is slightly over 50 per cent. One-half of the risk expense was directly allocated to species and only one-half had to be allocated indirectly. The use of the head times value was merely to distribute the risk items of the various species. It had nothing to do with the calculation or the total risk cost to the individual firm. Pages 41 to 57 contain the analysis of commissions by species, by mode of arrival, by units, and by firms. They are based upon the statistics which were taken off the account sales of various firms. These statistics are contained in the working papers and the information is also included in the blue audits.

The fact-containing bases for the calculations contained in proposed Government exhibit 115 are Government exhibits 114 and 114–A, each with their several individual exhibits, the appraisal of Mr. Henrici, and the salary questionnaire.

(Whereupon Government Exhibit 115 was offered in evidence and ruling deferred until cross-examination was had.)

I have prepared a report entitled "Differential Study of Operations, Income, and Cost, Commission Firms, Kansas City, Missouri, Livestock Market, Year 1931."

Government Exhibit 115–A

A copy of the report was marked for identification as Government Exhibit 115–A.

I did not prepare a similar report for the year 1929. We have made similar studies in the cases at St. Paul, National Stockyards, and Chicago. This report is a continuation of the cost study. It carries the cost study to its logical conclusion, takes the composite cost by species, and breaks it down to cost by units and by modes of arrival. It differentiates the composite cost into a number of other classes of costs. This differential study is founded upon the same fact-containing bases as Exhibit 115.

1236 These bases of distribution explained as to page 16 carry throughout this entire study. Sheets numbered from 1 to 16 are summaries of some of the information contained on the sheet from 16 and after. The headings on all of these sheets indicate what they summarize. (Whereupon the Government offered in evidence Government Exhibit 115–A.)

Government Exhibit 116

Government offered in evidence Government Exhibit 116 which is a compilation entitled "Receipts of Livestock at Kansas City

Stockyards by Days, Weeks, and Months, Years 1930 and 1931, and January to September, 1932."

This exhibit was compiled under my immediate supervision. It brings down to date the information contained in Government Exhibit 16 which was introduced in evidence in the former hearing. In Government Exhibit 116 the subtotals were not carried by weeks but they are carried by months. These figures were obtained from the records of the Bureau of Agricultural Economics which are maintained in the office of the Bureau in the Livestock Exchange at the Kansas City stockyards.

Government Exhibit 116–A and B

Government offered in evidence Government Exhibit 116–A and B which is a compilation entitled "Kansas City Livestock Market, Direct Hogs."

This exhibit brings up to date the information contained in Government Exhibits 16–A and B introduced in this proceeding at the last hearing. This exhibit was prepared under my supervision by Mr. Muse in the same manner as I testified as to Exhibit 116. This exhibit was taken from the same records as Exhibit 116.

Government Exhibit 117 and 117–A

Government offered in evidence Government Exhibit 117 and 117–A, a compilation entitled "Daily Purchases of Cattle, Packers and Butchers, for the Year 1930."

This exhibit brings up to date the information contained
1237 in Exhibit 17 and 17–A introduced in the first hearing in this proceeding. This was prepared under my supervision in the same manner and from the same sources as I have testified as to the preceding exhibits.

Government Exhibit 118

The Government offered in evidence Government Exhibit 118 which is a compilation entitled "Livestock Held Over, Kansas City Stockyards, for the Years 1930, 1931, and January to September, Inclusive, 1932."

This exhibit brings up to date the information contained in Government Exhibit 18. The set-up is a little different. In Government Exhibit 18 the carry-overs in first hands are shown on the first line, and the carry-overs in second hands are shown in the second line. On Government Exhibit 118 the carry-overs in first hands are marked "First" and in second hands are marked

"Second." This exhibit was prepared in the same manner as I have testified in the immediately preceding exhibits.

Government Exhibit 120–A, B, and C

The Government offered in evidence Government Exhibit 120–A, B, and C which is a compilation entitled "Livestock Weighed at the Kansas City Stockyards Covering the years 1930, 1931, and from January to September, 1932."

In general the information contained in this exhibit is of the same class and character as was contained in Government Exhibit 20–A, B, and C introduced in evidence at the former hearing in this proceeding. In Government Exhibit 20–A cattle and calves were divided as to straight lot, jackpot, combined, traders, and total. In Exhibit 120–A, B, and C the division for cattle is made only as between cattle in first hands and cattle in second hands. For hogs and sheep the information is identical. I prepared this exhibit myself from the records of the Kansas City Stockyard Company.

Government Exhibit 121

The Government offered in evidence Government Exhibit 121, a compilation entitled "Animals Slaughtered Under Federal Meat Inspection, Kansas City, Missouri," covering the years 1930 and 1931 and January to August, inclusive, 1932.

1238 This exhibit brings up to date the information of the same class and character as that contained in Government Exhibit 21. Government Exhibit 21 shows the information by years and Government Exhibit 121 shows it by months and years. This exhibit was prepared by Mr. Muse under my supervision from the records of the Bureau of Agricultural Economics at the Kansas City stockyards. (Whereupon Government Counsel explains to the record that at the original hearing in this proceeding there was introduced in evidence as Government Exhibit 19 a compilation entitled "Disposition of Livestock Received at the Kansas City Stockyards covering Cattle, Calves, Hogs, and Sheep for the Years 1920 to 1929, Inclusive." On that same exhibit was a table of direct shipments contained in local slaughter for the years 1920 to 1929. The first table covering the disposition of livestock will be brought up to date by offering in evidence a publication known as "Crops and Markets." The other table, covering direct shipments contained in local slaughter, is brought up to date by the column on Government Exhibit 116–A and B which shows the direct hogs received inside the yards. That is

the reason why there is no Government Exhibit 119 offered in evidence.

(Whereupon the witness was temporarily excused.)

MR. FREDERICK H. OLANDER, a witness formerly having testified, was recalled to the stand and testified as follows:

DIRECT EXAMINATION

I have prepared a statement showing the salaries and drawing accounts, employees and owners, of the National Livestock Commission Company for the nine months of 1932. This statement was prepared by the office manager of our company from the books and records of our business.

Government Exhibit No. 137 Introduced

In so far as this statement shows reductions as compared with the salaries shown on Government Exhibit 114–46, some of the reductions were made effective on January 1, 1932, some on May 1, 1932, and some on June 1, 1932.

1239 The larger consignments coming to our firm, for the most part steer cattle, are sold by the more experienced men. This type of cattle comes for the most part in carloads or more than a car-lot unit. In handling the smaller units, the men of less experience do the selling. The men who sell the car-lot stuff command larger salaries for their work than the men selling the smaller units. The first intimation that I had that those units were being handled at a considerable loss by my own organization was this morning when I saw one of the exhibits prepared by the Government. I was very much surprised and amazed to know that in the case of my own firm the expense on a straight carload of cattle was very much in excess of what I thought it would be. The cost per car for handling straight carloads was so much less than it was for handling of truck-ins when reduced to a carload basis. My opinion would have been and is now that from a practical operating standpoint, the differentiation between the two is not as great as those figures would suggest. One reason for this is that we use the lower-salaried men in handling the truck-ins.

CROSS-EXAMINATION

There is considerably more expense involved in the country contact on account of rail consignments than on account of truck consignments. The owner of small units, a great many of which arrive by truck at the present time, does not request

the commission firm to come and look at his livestock, as does the man who has a carload or more. A man might send 8 or 10 consignments during the year, the commission on each of which was under the sum of $5, and still not have his name placed upon the mailing list. This practice eliminates this element of business-getting cost as to such consignments.

Expenses incurred in traveling, attendance upon conventions and meetings, appraisal trips are largely on account of the rail business.

Exhibit 114–46, which is the audit of our firm, shows an expense of $3,827.02 on account of telephone and telegraph expenses, a small percentage of which was on account of livestock shipped by truck. This is one of the items of expense that would probably show an increase due to increased taxes effective in 1932. Our audit shows $860.84 under the heading "news-
1240 paper advertising incurred in the year 1931." The major portion of that was on account of an advertisement carried in the Kansas Stockman, the official publication of the Kansas Livestock Association, and others in a few farmer guide books published in and around Kansas City.

It is true of my organization that expenses on account of circular letters in 1931 of $3,009.45, postage $2,964.50, newspaper advertising $860.84, travel, appraisal trips, meetings, and the like $2,658.70, telephone and telegraph $3,827.02, and a large proportion of the time of the most expensive man in our organization relate very largely to the straight rail business. The expenses enumerated above attach themselves very largely to cattle, so far as our firm is concerned.

Exhibit 115-A shows that the truck-in cattle of our firm was 9,866 head of cattle and calves belonging to 2,938 different customers, and 50,156 head of cattle belonging to 1,069 owners and arrived in 1,869 cars. These expenses on a per head basis would be much greater on account of the 50,156 head of rail cattle than on account of the 9,866 head of trucked cattle. The risk involved in the handling of truck consignments is considerably greater in my opinion than the risk involved in the handling of rail consignments, for the reason that you have so many more units, so many more customers to deal with, in many instances strangers, and again the truck transportation has opened up a new avenue of dishonesty and stealing livestock that has magnified the risk that we take.

In writing a schedule of reasonable rates, I think the ability of the commodity to pay should be considered. Cost of the particular service alone is not, in my judgment, the sole guide to be used in determining the relative charges as between the different ser-

vices rendered on different species of livestock or different modes of arrival of livestock. In my opinion the per-head value of cattle arriving by rail is greater than the per-head value of cattle arriving by truck. A large percentage of our cattle truck business is made up of calves. At times the market has been so low on calves that after the expenses have been taken out there was nothing to send back to the owner. In some instances of that kind we have not charged any commission ourselves for the sale of a small thin calf that brings around $1 or $1.50, or even less.

The value of animals will range from that on a small calf
1241 up to $100 on some animal. Within the last week or so the spread in values for the different classes of cattle and calves has ranged from 60¢ to $8.75 a hundred. We have fat steers under present conditions which bring over $100 a head. There have been 1,300-pound cattle on the market this week which sold for $8.75 a cwt., which would figure in excess of $100 a head. Last week there were two cows on the market that sold for 60¢ a hundred.

It has been my observation that the flow of livestock to the market by truck is more constant so far as volume is concerned than that coming to market by rail. At certain seasons of the year rail consignments will be more than 1,000 cars the first day of the week and drop to 30 or 40 cars on Thursday or Friday of the same week, whereas the volume arriving by truck will not show as great variation as do the consignments by rail. Government Exhibit 116 shows that the receipts of cattle and calves at Kansas City for the year 1930 were 107,840 head in May and in October—232,543 head; in the year 1931—105,808 head arrived in June and 201,488 head arrived in October. We must carry a force during the month of June, at the low volume of receipts, in order to have help available at the October peak of receipts. We can't dispense with our help during the time when receipts are light and have an efficient force of employees at the time of the peak. We could save on expenses were it not for these peak loads. We have what may be termed a four day cattle market here at Kansas City. In the week beginning May 26, 1930, the number of head of cattle received at the Kansas City market was 23,364. In the week beginning October 20, 1930, the number of head received was 59,273. Our own business shows similar variation in receipts. We had to maintain our organization so as to handle the October business, which was more than twice as great as our May business. If the receipts of cattle were distributed evenly over the twelve months of the year it would be possible to reduce our per unit operating expense. I think the variation in receipts at Chicago is less than it is at Kansas City.

In the week beginning June 13, 1931, cattle receipts at Kansas City were 20,195. Receipts at Chicago were 39,763. Receipts at Kansas City during the week beginning October 17, 1931, were 51,222 head. Receipts at Chicago for the same week were 50,908 head. I should say that there would be greater
1242 ease and facility in adjusting operations to volume at Chicago than is the case at Kansas City. Our firm filed Tariff No. 3, effective May 23, 1932. The first information I had with respect to a tariff of this character was at the time of the St. Joseph commission rate hearing. It was my information that a tariff of this kind had been suggested as an improvement over that under which we were operating. I liked the tariff and before it was formulated at the market at Kansas City and filed I talked with different men on the market about the schedule and spent quite a little time in studying it and in making application of it to my own business. I like this tariff which is on a per carload basis rather than on a per consignment basis for the reason that it places the burden where the burden belongs. If a man ships a very heavy load of livestock, he pays for the number of cattle that he has in the car. That charge is graduated downward after reaching a certain number of head and it makes it possible for the man who has a large number of cattle to market, the consignments being such that they can be handled without a great amount of extra work, to take advantage of the fact that less work is required in the handling of a very large number of cattle. If 50 head of cattle of like kind arrive at market in two cars instead of one and belonged to one owner, and were sold in one lot, the only difference in handling would be that it might necessitate an extra man in bringing them from the chutes. From the standpoint of practical performance the two loads would be sold as one unit. If 50 head of cattle belonging to one owner arrived at market in two separate carloads and were delivered to our firm as one consignment there would be no substantial difference in effort or cost in handling them over what there would be in the case of another owner of 50 like cattle who sent them to market all in one 40-foot car or two 36-foot cars billed as a 40-foot car. The mode of delivery arriving solely out of the number of carloads, the number of head in the consignment being the same, makes little difference. The variation in the number of head per car and the variation in weight have increased within the last few years. We have had some carloads of livestock that weighed 14,000 pounds. We have had others that weighed 32,000 or 33,000 pounds. This variation has increased since the lower minimums have been adopted by the

railroads. The tonnage contained in some carloads is
1243 more than twice as great as that contained in others. I do not think that the provisions in the former rates in effect at this market or the provisions in the rates prescribed in the Secretary's order allowing for $2.50 differential according to the number of head in one car resulted, or would result, in an equitable and equal incident or charges. Based on a per consignment basis the difference between a minimum of $13 and a maximum of $15.50 for 36-foot cars is $2.50. The man who loaded 30, 40, or 50 head of livestock in a car would take the maximum charge for the selling of that livestock. Such a shipment would require in most cases a greater amount of service than would be required in the handling of livestock of a man who shipped in his livestock 15 or 20 cattle to the car. The man who shipped 15 or 20 head of livestock to the car would pay proportionately a great deal more than the man who put in a much larger number of head and loaded heavily. As a general rule large gross proceeds result from large tonnage, though this is not always the case.

The commission on thirteen head of cattle under old tariff No. 2 would be $9.75, or 75 cents a head, if those cattle were delivered by rail.

Under this tariff the commission of 15 head would be $1.00 a head. Under the tariff prescribed by the Secretary in his order of May 18 the charges on 13 head would be $9.10, or an average of 70 cents per head, whereas on 15 head the charge would be $13.00, or an average of 86 cents per head.

Under the tariff effective May 23, 1932, that is Tariff No. 3, the charge on cattle, weighing over 800 pounds per head would be 70 cents a head, for 13 cattle or $9.10 and would be 70 cents for 15 cattle or $10.50. The per head charge does not increase as the number of head in a consignment increases up to 20 head. It decreases after 20 head.

The charges on a carload of 28 head of cattle under the old rate were $19.00, or approximately 68 cents a head. The charges under the tariff prescribed by the Secretary provided the charge would be $15.50 for 28 head of cattle arriving in one 36-foot car, or approximately 55 cents per head. If they arrived in a 40-foot car, it would be approximately 59 cents a head.

About 85 per cent of the cattle arriving at Kansas City last year arrived by rail and approximately 15 per cent by truck. The receipts of hogs by truck at Kansas City in
1244 1931 were 51 percent of the total volume. The rail receipts 49 percent.

I am principally concerned with cattle. My firm, however, handles hogs and sheep to some extent. Every commission firm is interested in getting volume on the market. The hog business is gradually diminishing on the market. My own idea with respect to hogs was that the rates should be made low in order to find out whether it would be possible to get the hogs back on the market. I don't think there was any consideration given as to whether or not this particular hog rate would be remunerative. It was made with the desire to have a cheap hog rate in order to bring the hogs back to the open market. It is my opinion that if the majority of the hogs of this country were marketed through the open markets that a truer value of the hogs would be registered than is being done, when the large percentage of hogs go direct to the packers. The producer would get a better price for his hogs.

I do not think that the handling of a single calf and of a single head of cattle warrants the charge prescribed in the order of the Secretary. The charge prescribed in the Secretary's order on account of single head consignments is greater than that formerly prevailing.

There was a rather general sentiment that not the cost of handling but the depressed condition of the business should have weight in the prescribing of the charges for single head consignments.

In arriving at my conclusion with respect to Tariff No. 3, I did not give particular consideration to the cost of handling truck-ins as compared with the cost of handling rail consignments. It is pretty hard to make the owner of cattle, who ships by truck, believe that it is worth any more to sell cattle, simply because they arrive by truck, than it would be worth if he had shipped them in a railroad car. Simplicity in a tariff is very desirable.

I had no particular difficulty in applying Tariff No. 3 to past consignments received by our firm. The work went along very nicely. There are objections to Tariff No. 3 on the part of bookkeepers who apply the tariff. The account salesmen in our firm thought that this new tariff was something that they should not have to contend with. They became accustomed to a certain tariff over a long period of years. It becomes simple for them to apply it and a change means that they have to do it
1245 differently from what they are accustomed to do. It is quite natural that some complaint and criticism should arise.

This objection wears off as they become more familiar with the new tariff. This is true in case of our own firm. Since the first

week of the application of the new tariff criticism has been practically eliminated altogether. The account salesmen in our office seem able to apply this tariff with the same relative degree of speed as in the case of former tariff. The application of Tariff No. 3 to our business resulted in approximately a 10 per cent decrease in the cattle commissions and around 16 to 17 per cent in hog commissions. I made no application of the tariff to sheep. We handle a comparatively small volume of sheep.

It is the turnover under the rates charged that has the greatest effect in determining the gross yield of any of these tariffs constructed on a unit basis. As between different classifications of livestock, separately rated, the turnover under the different rates may vary as between the different markets.

The value of the commodity handled did have something to do with my judgment as to the proper amount of the commission charged. I gave it consideration rather than the primary cost of handling. If we are going to follow out the policy of putting the burden on the commodity that is best able to pay I believe this should be done.

Tariff No. 3 which went into effect on May 23, 1932, makes an adjustment in this general direction from former tariffs. The calf charge is the same on the first 20 head as contained in the Secretary's order. The charge on heavy cattle as to the first 20 head is 10 cents per head in excess of the charge contained in the Secretary's order, headage charge only being considered. I think that Tariff No. 3 is susceptible of still further adjustments if primary consideration is to be given to the ability of the traffic to pay the charge.

The National Livestock Commission Company represents as buyer on this market John Morrell & Company with headquarters at Ottumwa, Iowa, which company clears cattle purchased for the Milner Packing Company at Frankfort, Indiana. We buy all the cattle bought on this market for John Morrell & Company. We buy stockers and feeders in substantial amount for country men. A great deal more time is expended in the purchase of stocker and feeder cattle than there is in the purchase of fat cattle for packers.

1246 On the 13th and 14th of September of this year we had out as the result of purchases we had made for packers and others in the course of the two days $119,000. It has been my observation that the man who is an owner of a business at this market puts in more hours, makes the greatest effort possible to serve the customers and that as a general rule is more valuable to his csutomers by reason of that application. The owner has little regard for the number of hours a day he works or the

number of days in a week he works. I have noticed that long after most of the employees have left the yards, having finished their duties, that the owners of the businesses are there. If I should leave the commission business and go into the production of livestock I would feel that an owner salesman at this market would better serve me than some employee. I say at the same time, however, that there are exceptions and there are no doubt employees who will strive just as hard as the owner.

It is impossible in the actual operation of the business to maintain an even keel and an even flow of all types of business. I wish it were possible to do so. It would be an ideal condition in the livestock trade if the receipts came to us in a uniform flow over six days a week but climatic conditions and other conditions work against that. Our market letter this week carries the suggestion that the shipment of cattle should be held to a very low volume next week. The congested condition in the beef trade makes it necessary to throw out that suggestion to the trade. Very likely next week our volume of fat steer cattle will be low if they heed that advice. That is just one condition that makes impossible the chance of receiving the volume of livestock in an orderly, even volume. We must receive shipments as they come to us. If they all come on Monday we must receive them and handle them at that time and if they are low on Wednesday, Thursday, and Friday, as they usually are at the end of the week, we must have a force there that is capable of taking care of that peak day in the week. On many days there is not sufficient work there for all the employees over a full day's time. This is one of the conditions that confronts us in this business. I wish it were possible to have some control over it in order that we might have an orderly marketing program. If we could have
1247 this it would be better for all concerned. There is probably not one firm at the Kansas City market that has a business in hogs, sheep and cattle all on a relatively high average volume. Some of the firms are high in cattle and low in sheep, others are high in hogs and low in cattle. My own firm is high on cattle and low on sheep and in the middle class on hogs. Yet, we strive to build up a volume of hog business. We should like to be among the top volume in hogs but it is not the case and we have to accept the condition as it is and make the best of it.

I am continually turning over in my mind on each business day at the yard the thought of who may be the best buyer for the particular class of cattle I have to sell on a particular day. Conditions as exist at the present time are quite different with respect to buyers from what they have been. Recently the com-

dition in the fat cattle market has been one that brings the buyer out on the market in the morning for a window-shopping tour. They want to find out what is on the market. They do not care to place any bids except perhaps on a particular lot which may exactly suit them. The character of the packer demand for cattle has changed. Greater discrimination is made between grades. The salesman cannot simply stay in his alley and expect the best buyers always to come to his pens. He has to be on the lookout all the time for buyers. I had reason to believe recently that a certain packer buyer would be a good active buyer on Monday because of his connections on the previous Monday. He buys most of his cattle in a part of the yard some distance from where my pens are located. I looked him up, brought him over to my pens and—successful in selling him a substantial number of loads of cattle at from 35 cents to 40 cents a hundred more than I had been bid by other buyers who had looked at them. Had I remained in my alleys and waited for him to come I might not have gotten him at all until after he had filled his order elsewhere. A salesman must be alert, he must be aggressive if he is going to get the best possible result for his customer.

In the particular cattle to which I have made reference the weights would run from approximately 1,000 pounds up to 1,200 pounds and the 35 cents or 40 cents a hundred would have meant from $2.50 to $3.00 a head. This is five times the commission charge. I want every buyer on the market to know what I have.

When the buyer goes out in the morning he may not have
1248 an order at that particular time for the particular class of cattle that I have to offer. Later on in the day orders may come to him by message or by runner to buy certain other classes of cattle. If he knows that I have them there would be a tendency on his part to come to see them.

There are very few times that an active livestock salesman sits on the fence. If I had 10 or 12 carloads split according to quality in 30 different classifications I would not have the time and opportunity to enlist particular buyers to the extent that I would have if I had only a few separate classifications or bunches. I do not believe there has ever been a time in the history of the livestock markets in this country where the buyers operate under such strict limits as do the packer buyers today. This situation has been brought about by a discriminating consumer demand. This has tended to make the salesman's job a more difficult one, one that places upon him a high nervous strain because of the uncertainty as to buyer requirements. The grading of beef in packers' hands has tended to cause the buyer to place an estimate as to grade of cattle on the hoof before he

actually buys them. He tries to picture what an animal will look like on the hoof. All these conditions have tended to make the salesman's job a more difficult one. It is the salesman's desire to perform with the highest degree of efficiency. This taxes the salesman to the limit. The conditions prevail with respect to fat steers more than with respect to any other grade of cattle.

The factors that I mentioned in my former testimony such as the competition of direct buying, competition afforded by financial aid given to certain cooperative agencies, the widely extended area from which this market draws its livestock, are all still present. In my one particular business we cannot with any degree of efficiency serve our customers if I had to sell thin cattle along with the fat cattle.

REDIRECT EXAMINATION

We try to keep the personnel at a number that we feel will be consistent with good service. The facts of the matter are we carry an organization intact throughout the year and add extra men during the fall, during the heavy months. Those extra men would be yardmen just following cattle from the
1249 railroad to the pens and helping in the sorting, watering, feeding, and weighing. We do not employ extra help in the office during these heavy runs.

The first time I ever heard anything about a schedule like Tariff No. 3 was after the conclusion of the hearing at St. Joseph. It was first brought to my attention in a discussion I had with Mr. J. W. Roberts. He was the accountant employed by the respondents who are members of the Kansas City Live Stock Exchange. I was present at a number of meetings that were held to discuss this particular tariff. Those were meetings of the members of the Exchange. The tariff which was the basis of consideration was in the first instance one prepared by Mr. Gage, respondents' counsel, and Mr. Roberts. At the times that I discussed this particular tariff with other members it was in consideration of trying to arrive at a tariff that would produce a reduction below the one that we had been working under and yet one that would be fair and reasonable under the circumstances. We thought that it would be simple in structure and apply more equitably to the business we handled. I was present when all three species were under discussion and consideration. The respondent members of the Exchange all finally filed this same tariff. I stated this morning that this tariff was not satisfactory to me in all respects, but for the sake of rate uniformity my firm filed the tariff. I think all the members realize the advantage of rate uniformity at a market.

I think that a tariff that would remunerate the commission men at one market for their services, where that market was primarily a market receiving a great volume of truck-ins, might be ruinous where the greater volume of livestock was received by rail. That was my reaction to the tariff proposed by the Secretary for this market. It was ruinous on straight carload consignments, and that composes 75% of our cattle and calf business. Even at Kansas City there will be firms the greater part of whose volume arrives by rail, and there will be other firms that a greater part of whose volume arrives by truck.

I do not feel that any employee that I might employ can do as good a job of selling livestock as I can myself. It would be my idea that that would apply generally throughout the market. One man's best may not be as good as another man's best. I think that "best" is best exemplified in the case of owner-salesman whose success in the business depends altogether
1250 and entirely on their record and the service that they render. I think that the average farmer shipping livestock to the country is better satisfied with the efforts of an owner-salesman than he is of an employee-salesman. A letter to one of the owners of our firm just this week from a man in Texas who consigned us two cars of calves said: "Now, if you are not going to handle these calves yourself, I want you to personally supervise the work because I am looking to you, because I don't know who sells your calves." The average man in the country figures that a calf salesman is not an owner in the business. I think I would be better satisfied if I patronized a firm that was organized so that the owner sold the cattle and the hogs. There would be no way of determining whether owner-salesmen actually get the higher prices for the livestock. I do not want to let the inference be made in my testimony that I don't think that employee-salesmen can get the top prices. They can get the top prices. The distinction that I am trying to draw is between the interest that the average owner-salesman takes as compared with the employee-salesman. I mean the interest in building up the business, working longer hours to the advantage of the business, and the actual effort in selling the livestock on the market. It would be a fine condition if the livestock would come in an even flow to the market five or six days of the week. It seems like it is an impossibility. I have participated in meetings that combined livestock producers, railroads, packers, and commission men, for the purpose of trying to see if something could not be worked out, but nothing has been accomplished. I do think that our market here, with the great bulk of the cattle coming the first two days of the week,

that condition is accentuated by reason of the large volume of stocker and feeder cattle. At this particular time of the year, on Mondays with twenty or thirty thousand cattle, a very small percentage is fat cattle. They come in many instances from points quite distant from the market. A ranch-man uses the week-end to round up his cattle, and a large percentage of them shipping stockers and feeders like to get there on Monday for the reason that they figure that most of the bargains from the outstanding Corn Belt points will be there on Monday, and furthermore the local buying agencies will have their pens clear and be ready and anxious to take on a fresh supply.

1251 There have been a number of firms at this market that have combined their hog business and turned it over to one man that formerly had individual hog salesmen of their own. We have conditions here confronting the business at this market that are not applicable to some other markets to as great an extent. Those conditions contribute to increasing the unit cost.

RECROSS-EXAMINATION

The only way to determine accurately the yield of income from a given schedule of charges would be the actual application to the business as it comes. That would be necessary both from the standpoint of the user of the service and the provider of the service. A man with a few head of cattle very seldom obtains the attendance of commission men in the appraisal of their few head.

The entire expense of appraisal and contact work in the country is on livestock that approximates load lots or more than load lots. I think it can be accurately stated that in all firms more than 90 per cent of the expense incident to country appraisals should go on consignments of a carload or more.

REDIRECT EXAMINATION

In the case of cattle owned by speculators, we only take them for the purpose of sale when we can conveniently handle them. There are days when we do not handle any because of the fact that the fresh arrivals are in sufficient numbers to preclude the handling of seconds. I have always looked on the handling of seconds as being more or less of a fill-in proposition. We tell the trader that we do not have the room to handle their cattle on a particular day and they do not receive the same amount of service that the fresh arrivals do.

RECROSS-EXAMINATION

If we get a bunch of cattle that take a heavy fill, we are very anxious to get early action on those cattle if possible in order to get that weight over the scales. That means that a salesman will get out and try to find an early buyer for a lot of cattle that have that fill, because in doing so he can better serve the interests of the owner. The 1,200 pound fat steer will take on from 25 to 40 pounds.

(Whereupon the witness was excused.)

1252 MR. JOHN J. BACHMANN, a witness called by the Government, having previously been sworn, testified in substance as follows:

DIRECT EXAMINATION

On page 15 of Government Exhibit 115 under the head of "Clearance and Loan, Salaries," there was apparently included as an elimination the salaries for selling those head handled on a split-commission basis. Those salaries should not have been eliminated in the cost study. The adjustment can readily be made by eliminating from that column any salaries which have to do with the selling of livestock on a split-commission basis, and including them under these salaries in their proper places. I have the questionnaire which has been mentioned frequently in my testimony. The questionnaire was drawn up for the purpose of distribution of salaries mainly. There is included in it the distribution of office facilities. It contains, in addition to the firm designation, the names of the various employees, the numbers as given to them by us, whether they were owners or employees, their main duty, the amount of salary, compensation, or withdrawals, and the distribution to functions which have to do with the commission business or functions which have to do with the loan business or other business. That questionnaire is contained on blank forms that were prepared under my supervision. It contains the number of exchange memberships held by each firm. Each firm has a separate set of sheets. The entire skeleton information up to the point of distribution was entered by Mr. Svoboda, a senior accountant working under my supervision. That information was entered from the blue audits. The questionnaire was then turned over to the secretary of the exchange, and he and Mr. Svoboda, together with the employees or officers of the various firms, except the two cooperatives, made the distribution after discussion with the respective companies. They placed on each questionnaire the percentage of time which

the individual devoted to any particular function. The remainder of the work was then mechanical.

1253 Government Exhibit 115–B

(Whereupon the Government asked that the questionnaire be marked for identification as Government Exhibit No. 115–B.)

The questionnaire contains a sheet or sheets covering each of the cooperatives. In those two cases Mr. Svoboda worked directly with the officers of the cooperatives without the assistance of the secretary of the Exchange.

From the information that we have in the work papers an exact test on the tariff prescribed by the Secretary in his order can be made in the case of most firms. The firms that I would except from that would be those firms which had their account sales filed in alphabetical order. In the case of those firms where there are plural ownerships it would be difficult, if not impossible, to identify the livestock of the various consignors with the particular consignment in which they all shipped their cattle or their livestock. We would not have the information exactly as to whether or not a certain individual's livestock came with another individual livestock. It could be determined in some cases from the working papers as to which firms filed the account sales alphabetically. We did not take off the information as to the relative weights of head in the consignment and could not accurately and exactly test a tariff of that kind. Our information does distinguish between cattle and calves on the basis of the 400 pound weight. I have made three tests of Tariff No. 3, the first covered by species for the year 1929, the next two covered only the species cattle for the year 1931. The first step would be a comparison of the old tariff with Tariff No. 3. In examining our cost study for 1929 I noted that the composite head income for cattle was approximately 65¢ to 66¢. In examining Tariff No. 3 and noting the per head charges, and having some information as to how the head ran as to weights, I could determine approximately that the new tariff would bring in an average of about 65¢ per head for cattle without any test whatsoever.

It was immediately apparent that the Tariff No. 3 had not made any great cuts in the cattle rate. That preliminary test is only made to give an idea as to the comparative increase or decrease in a proposed tariff as compared with an existing tariff.

The next thing is to make as exact a mathematical test as
1254 is possible with the information which the individual has.

In making a test of proposed Tariff No. 3 we had commissions which had been received under the old tariff by mode of arrival. We had also analyzed by mode of arrival the cars

or equivalent cars, decks, head, account sales, owners, drafts, and commissions. The thing that we lacked, which we did not have, was how the head varied by weights. I made an inquiry from those who had been on this market and should know something about the weights as they ran. I assumed that that provision meant 20 head in a draft and that draft being by sales classification. I had in mind that the first 20 head of a draft were to be assessed with a higher charge rather than the first 20 head of a consignment. I did not attempt to ascertain the total revenues of each firm by firms. I determined the total revenue from the market as a whole. My original test for 1929 showed that the old tariff produced $2,254,166. Tariff No. 3 would, under my estimate, produce $2,158,640, or approximately a 4% cut. I did not complete the information in its entirety in test No. 2. Nor was the third test as complete as the first one was. They were for the purposes only of checking up on my original estimate and checking up in the light of the new data which I had gotten and the interpretation which had been placed on No. 3.

I made a third test only for the species cattle and only for those particular tariffs which applied to the selling of fresh animals. In the third test I did not compare the revenues actually derived during 1931 from the tariff in effect during that year with the revenue which would have been derived in that year had tariff No. 3 been in effect. My test on fresh cattle showed that there would be some modification of my original estimate, but that such change would not be very material. When we arrived in Kansas City we had a conference with the various Exchange members. In the course of that conversation I stated that I had made a test on Tariff No. 3 and arrived at the conclusion that it would produce a 4% cut. I was told that the Exchange had made a test which showed an 11% cut.

Under cattle arriving by truck, the classification of from 2 to 20 head gave us some difficulty of interpretation, although we interpreted that the first head should be charged 80 cents.

1255 Owners capital, shown on Exhibit B of form No. 101 represents the difference between the assets which the firm has and *and* the liabilities to outsiders. It is the owners' equity in the business. I heard the testimony of Mr. Maurer in this proceeding stating the amount of capital which he employed in his business. He testified that all that capital was necessary in the conduct of his business. The actual amount of capital which he used was $108,000. In my opinion, it does not all relate to the order buying business. The item "Accounts Receivable, others $98,253.58," includes an item of $26,115.42, being an advance on cattle and calves on a ranch. There is another item included

in that, being $25,907.30, due to the firm from the J. J. Major Packing Company. There is another item in there which is a charge to the Parkville Farm in the amount of $46,200.86. Those three items apparently are not applicable to the order buying business. If those three items were eliminated from the assets of the company and the remainder of the assets were assumed to be the proper capital of the order buying business, there would remain only about $10,000. I believe that Mr. Maurer stated that he operated two farms. I understand that Mr. Maurer is the owner of the Major Packing Company and that it is managed by his son. That information is shown on the work sheet and was taken from the books and records or from the Respondent himself.

CROSS-EXAMINATION

The first so-called test of the effect of tariff No. 3 was made about May 9, 10, and 11, 1932. I do not have available the data which I then submitted. I have the memorandum and the final summary figures. I submitted the results of my test to my immediate superior on May 11, 1932. That was prior to the effective date of the tariff of May 23, 1932. In that letter I stated the following: "Our analysis and estimate shows that had this tariff been in effect for the year 1929 the amount of gross revenue, which it would have produced, is $2,158,640.00. If this amount is compared with the actual gross revenues received, the result would be a decrease of approximately $95,000.00 in favor of the proposed tariff or approximately a 4 per cent cut. The estmate for cattle and calves is based on the assumption that two-thirds of
1256 the receipts are stockers and feeders and would, therefore, receive the lower charge." I calculated this according to the information that I had available on the basis of the rates, specially in cattle applied to drafts and not to consignments. The head, cars, decks, account sales, owners, and drafts were all analyzed by mode of arrival. By comparing all of that information and associating it, it was evident that for some modes of arrival, the number of drafts which contain 20 head or more were negligible, if not zero. That information has been substantiated by our analysis in 1931. I made the second test about three weeks ago and the third test was made about four or five days ago. I did not have the number of consignments. Before I made my tests there was prepared for me the number of cars containing the varying number of head. That information was abstracted from the work sheets underlying the 1929 audits by clerks working under my direction at Washington. I made a thorough examination of everything we have here and have not been able to locate those work sheets.

I recall that a reporter was there. At that conference the question came up as to what percentage reduction tariff No. 3 would result in. The question was put to me whether or not if it could be shown that tariff No. 3 produced a 10 or 11 per cent cut, the Department would change its decision to hold a second rate hearing. I was requested to get in touch with my immediate superior by long distance telephone, which I did, and brought back the report that my superiors thought that the question of what the cut in gross revenue was, was not material to the issue. I stated that it would not change the decision which had been reached by the Department and that the Department felt that a percentage cut in revenue was not a test of the reasonableness of unit cost nor whether or not any tariff meets those reasonable costs. I interpreted Section D entitled "Application of Charges," to mean specified sales classifications in accordance with drafts. I understood the sentence which reads as follows: "A consignment shall consist of livestock of the same species, consigned in the name of one individual or firm, and delivered to a single market agency on the same business day." I could not see the relationship of the definition of a consignment to the rest of the tariff at that time. I had previously read Section A in regard to the weight classification of cattle and calves and the
1257 major classifications, as between those arriving by rail and arriving by truck. It did not come to mind that these were the specified classifications referred to in Section D. The first time I ever got clearly in my mind what was meant by weight drafts was since this hearing has been going on. The weight factor was not given any consideration in our analysis of the account sales. I recall that Respondents' counsel requested us to get certain information. I made an estimate of the time it would take us with the staff which we had at Kansas City. I estimated that it would take approximately 9 months to get that information. I can apply this tariff without getting that information as to the business of any individual firm. Collectively, I can make a pretty accurate estimate and in the case of most firms I can individually on each consignment in most cases make an exact computation from the information we have. I have not done that. I have collected enough information to make a test but not in order to make an application of the tariff to make an exact computation, I would have to have the weight information. I can only make a test for the firm as a whole and classify 45 per cent of their consignments into the 400 to 800 pound class and classify 55 per cent of the animals into the 800 pounds and over class. They are going to run that way on an average.

I have made it perfectly clear that I would have to have the information as to weights on a particular consignment in order

to apply the tariff to a single consignment. There is the work sheet on which I retested for the third time the species cattle. I set up the varying rates in the tariff and analyzed the number of head coming within those various head charges on a' estimated basis.

Respondents' Exhibit 200

This sheet shows that the interpretation was not yet placed on the 80-cent charge, because I have animals classified under 80 cents. I understand now, in the light of Mr. Olander's testimony, that there is no such thing as an 80-cent animal, except single head in a single consignment. According to my test, the normal for the market of those running in excess of 20 head in an individual consignment would be 45 percent. An examination of the work papers in this case leads me to believe that 45 per cent is normal. That is not a pure, unadulterated guess. I
1258 have here analysis by consignments of Firm No. 63 for straight cars, single ownerships. A fifty-fifty-break would require an average of 40 head to a consignment, but they don't do that. You will not find an average per consignment of 50 head. On the first page of this exhibit they average about 70 head of cattle to a consignment. Twenty-eight per cent of the cattle on the first page took the higher rate and 72 per cent took the lower rate.

I figured that about 45 per cent of straight single ownerships would fall 20 head or over and 55 per cent would fall 20 head or under. I determined that 262,344 head would take the 70-cent rate.

I personally do not like averages. If I had used averages, I would have taken 33⅓ and 66⅔. I increased the 33⅓ to 45 percent to be certain that I was conservative. I did not use averages in this particular case. I arrived at a fairly accurate estimate, but an accurate result I could not arrive at. For the purpose of my third test, I took an estimate of the weight and arrived at what I considered a normal of the number of head that were below 20 in a consignment and the number of head that were over 20 in a consignment.

At the time we made the second test we had already completed the analysis of 25 per cent of the scale tickets of the stockyards. That analysis showed that 45 per cent came within the class of 400 to 800 pounds. The average from year to year would run from 35 to 45 per cent. I computed that on the basis of 1931 receipts. That comprehended the total of the animals at the market, eliminating traders' sales. It took the market as a whole and in that sense it was not an average.

In my original test I took five per cent of the cattle as coming 20 head or over to a draft. In the light of the present interpretation that was wrong, because it was not 20 head of the draft, but 20 head of a consignment. I adjusted the five per cent to 50 per cent, and I applied the single ownership rate only to single ownerships, or consignments of one head, or truckins.

As I calculated it the first time, my original estimate showed a reduction slightly under four per cent. The next one slightly over four per cent, and the third test would come to about five per cent.

1259 Under the old tariff hogs produced $536,488. We estimated that if the new tariff had been in effect in 1929, hogs would have produced $460,300, or approximately a 14 per cent cut. On sheep the old tariff produced $175,405. The new tariff under our estimate showed an income of $173,150, or slightly over one per cent decrease.

In the differentials study the distribution to mode of arrival within the species was made on the basis of head and drafts for selling salaries and the basis for distribution of buying salaries was buying head and buying drafts. One hundred per cent represented the total of all head and all drafts added together. I felt that the method of combining the head and drafts would be closer to the fact that by using either the head ratio or the draft ratio alone. I had no purpose except to determine as best I could what it cost to handle the various consignments in the varying modes of arrival. It was apparent that either of those two methods was an extreme so I combined the two of them to throw it in between somewhere. I feel that it is a ridiculous comparison to say that this method is like adding apples and pears together to get oranges.

When you analyze the work that the individual does it is related to account sales, owners, and drafts. The same situation applies here on head and drafts. It gives us a basis for distribution. The effect of the combination was to assign more of the expense to the arrival account represented by the rail consignments on account of there being a greater number of head per draft than the arrival account represented by drive-ins on account of there being a lesser number of head per draft. The rail percentage of cost distributed on this basis in drafts containing one head to a draft as compared to livestock sold in drafts containing 10 head to the draft would be 11 to 2. Suppose we have two drafts and we have 11 animals. Suppose it cost $1.30 to handle those two consignments for salesmanship. For the consignment having one head and one draft, it would then cost 20 cents, or 20 cents an animal. For the drafts containing 10 animals, it would cost $1.10, or 11 cents per animal.

I was talking about statistics for the years 1929, 1930, and 1931. Instructions to auditors were changed in some minor details. The matter of gathering data was changed little if any. The change was mostly in the form of a setup of
1260 the final statements. The instructions were to get everything they could with a reasonable expenditure of time.

There was no change with respect to the gathering of any unbooked items. I do not know how the change came about in set-up, except assessments. In the audits made in 1932 a general heading of Exchange Soliciting was carried into the audit and the lump sum figured without any classification of such expenditures. The change may have come about by reason of the way in which it was handled in the preparation for a conference in the Chicago case. While the profit and loss statement on Form PS–3 has an item of "Exchange Assessments and Dues," the heading in these last audits is "Exchange Soliciting." I tried to make an investigation in Kansas City. I was told that there was a part of that expense which was applicable to the amortization of the cost of the previous rate hearing. I do not think that the Exchange solicits for any individual members and do not have any field men out soliciting business that I know of. The only activity of that kind that I know of would be the cost of the radio market reports and the cost of salaries and gathering information and making the broadcast. I would classify it under a broad definition of soliciting expense. I do not know whether I would classify the bulletin board in the lobby as soliciting expense.

There was no uniformity so far as the books were kept. There was uniformity so far as the blue audits were concerned. Every accountant put it down as he found it. That resulted in non-uniformity of general results as far as net gain or loss in concerned in respect to the several audits.

I do recall that on business-getting and maintaining there was used the record which the Exchange has as to the number of days which individuals spent in the field. All other items can be and in fact were reduced to a percentage basis. Except as to the number of days spent in the field, the other percentages were a matter of estimate. They were an estimate in the case of every individual where he spends his time at more than one function. This estimate was made in September 1932. The breaking down of the total time to functions is an estimate and it may be that an individual in a small way put a little bit too much in one function and maybe not enough in another.

I certainly do not agree to any such method of appraisal of the value of owner's services as the one which was put
1261 into the record in the previous hearing. The method of appraisal used here in the first hearing and subsequently

in other hearings and any method similar to that is subject to the logical fallacy of reduction to an absurdity for the reason that some of these appraisals have shown that in some cases the selling salaries for a car of livestock would be $25 per car or more. That does not appeal to me as being at all reasonable. I did not attempt to make any appraisal. I feel that the method that was used in the Tagg Brothers and Moorhead case is sound in that it sets up as a reasonable cost for rendering selling service the price at which that service can be bought.

In exhibits which have been introduced I have attempted to set up unit costs but not reasonable costs. Its function is to assist in the determination of reasonable unit costs. We attempted to set up costs as they actually existed in so far as we could determine them. I have stated repeatedly that it is not my province to determine reasonable costs. I went as far as I could on that question in determining what the reasonable selling cost should be. The secretary determined what a good salesman was worth and then set opposite to that worth the reasonable volume to be handled for such a salesman. I was trying to determine actual costs as best I could. My personal acquaintance with the owners is not such as to enable me to determine and fairly adjudge their true worth to the patrons of the market or what constitutes a fair compensation for them. In my opinion nobody can determine that. That is very much a matter of opinion and varies with different individuals. I used my judgment in determining the amounts set into the cost study as represen'tive of the cost value of owners' services. I came to the conclusion that the best way to handle it was to put them down as we found them. I don't see how I could have utilized the Secretar's method of appraisal or could have used the appraised value of these owners' salaries as applicable to the year 1929.

This hearing or rehearing was granted on the theory of changed conditions. I made no investigation outside of what is found in these exhibits as to what the changed conditions were. The amount of $46,326.12 represents salaries of owners not shown on the blue audits as salaries, but were profits. We set those profits up in lieu of salaries. The elimination of salaries for clearance and loans is made on the theory that those func-
1262 tions were not a part of the commission business as such.

In so doing I exercised my own judgment. As to Firm No. 1, if I had calculated that firm on a net profit basis as to the salary account of the owner, the amount set into the cost study would have been $1,448.08 instead of $2,400. As to Firm No. 4, there was a net gain at the end of the year of $998.62. The amount set into the cost study was $450 representing the sums drawn during the three months of the year. If I had figured that

firm on the same basis as I figured those other firms the amount of owners' salaries would have been $1,448.62. In Firm No. 5 the owners' salary account balances out exactly against the net profit. It is one of those firms where I added in the net profit and made substitution of figures from the blue audits. In connection with Firm No. 6 owners' salaries taken into the cost study amounted to $6,900. The company shows a net loss of $2,138.38. If I had adjusted all the owners' salaries for whatever profit or loss was shown for 1931 the amounts which I would have set into the cost study would have been $4,761.62. As to Firm No. 7, the owners' salaries amounted to $8,175 and the net loss was $958.15. No owners' salaries were shown in Firm No. 9. The net profit was $1,572.62. I set that net profit into my cost study as I did in the other instances where no owners' salaries were shown on the blue audits.

Firm No. 11 showed no owners' salary and a net loss of $452.95. No change was made from the blue audits as to that firm. If we were to go through all the firms one by one there would exist a lack of uniformity. The method was uniform; it is the books that are not uniform. If there was a profit we set the profit up in lieu of salary where there was no salary shown. Where salaries were shown, salaries were taken. Where there was no net profit nor salary, we took nothing.

No two firms are identical as a matter of fact. The result of the cost study varies with varying conditions that we found. When I excluded the loan salaries I arrived at my judgment with all the facts before me that I could get. The loan business is a banking business or a financial business. We are regulating here commission rates and not banking rates.

I also struck out the amount of time of employees and owners devoted to selling livestock on a split commission basis. That was a mistake and it can be determined from the ques-
1263 tionnaire what proportion of the salaries listed under clearance and loan salaries are applicable to the split commission volume. That amount should, under our theory, be transferred back into the unit costs that are allowable.

The blue audits being based on the books were not very uniform in respect to depreciation of any kind. Very few firms had booked that expense. In respect to automobile depreciation a large number of firms failed to include any expense. Uniformity is not the main requisite. What they actually incurred is the requisite.

Firms 10 and 36 took too much depreciation on their books during the year 1931. Those eliminations are an adjustment to make what they took on their books conform to our calculation.

Workmen's compensation was calculated on the basis of non-owners' salaries. It is my understanding that an owner does not insure himself under a workmen's compensation policy. He insures his employees to protect himself for injuries to them. I took none of the owners' salaries, not even where the firm was a corporation and the owners were stockholders.

The straight line method of depreciation produced an amount of total depreciation of $19,519. The amount produced by the sinking fund method was $15,739. The next column of expense elimination relates to charity and donations. Those were the amounts eliminated from the expense shown on the profit and loss statements in the blue audits of these firms. If these community chests did not exist I do not think that it would necessarily mean that the public would have to take care of the situation by increasing the tax burden.

Under the next heading of "Bad Debts and Loans" I did not eliminate all items of representative or bad debts and losses shown on the blue audits as sustained by the several agencies in their business operations during the year 1931. If there was a small bad debt in the nature of an advance to an individual, for instance, it was not eliminated. But if it applied to loans, or if the amount was out of the ordinary, every one of those was eliminated. If it is a small amount, it is relatively unimportant. If it is a large amount it does become very important. I don't feel that amortization applies to bad debts for the reason that the company if it wants to take a long chance on an item of that kind ought to assume the risk itself and not try to pass it on to somebody else. My reason for eliminating it was possibly
1264 the judgment which the Secretary had expressed on the matter and also the lack of judgment, or at least no other judgment, on the part of the firm for taking a risk of such a character and then trying to assess a risk of that kind of a loss back to the shipper. The same reason that applied to bad debts applies to refusal of purchases which entered into one item there of $12,587.03. From the information I infer that the company on its own initiative took a long chance on shipping out that livestock and getting its money back and had to take the livestock back again and take that loss on it. The total amount under the heading "Refusal of Purchases" is $13,962.28, of which about 85% is applicable to one firm. After having refreshed my recollection as to Form P. S.-3, I will state that the gross value of purchases is stated separately from the gross value of sales. Those annual reports all go over my desk and the statistics that I gathered from them all go over my desk, but I do not attempt to remember any of them. The net gain made by the agencies at the Kansas City stockyards was less in 1931 than it was in

1929. I do not know as to the gross value of livestock sold and purchased. I understand that the Exchange is registered as a market agency but it was not cited as a respondent in this case. I do not concede that an investment in an Exchange membership is neecssary for the conduct of a commission business. A market can operate without there being an exchange. A group of individuals can get together and create a market without having any value assessed against an exchange membership. The fact that the New York Stock Exchange membership sells at $125,000 and the New York Curb Exchange membership sell at $40,000 or $50,000 does not in any way destroy the value or increase the value of either of those exchanges. We have markets which function without an exchange and I believe function efficiently. I eliminated both income and expenses with respect to interest, exchange, and collections. The amount of income which I eliminated from this source was $49,952.65. I did not include anything in my working capital allowance for financing purchases and sales. Of the total cash which they actually had, I had in my computation of the working capital allowance allocated $166,100 as being the cash working capital allowance. The total amount of cash which all of the companies combined had at the beginning of the year 1931 was about $303,000 and for
1265 the end of the year the cash that they had on hand was about $211,000. The $166,100 which I have allowed as cash working allowance for the operation of the commission business as such is based on the cumulative operations of the entire year. Referring to the recapitulation of business getting and maintaining expenses in Exhibit 115, the first column is entitled "Advertising." That advertising covers newspaper ads, circular letters, postage, specialties, and novelties, signs of various kinds and other miscellaneous items. Under newspapers and magazines the figure incorporated in this total of advertising expenses is $13,611.31. The total commission income as I calculated it for the year 1931 was $1,911,837.81. The expense of newspaper and periodical advertising would be about 7/10 of one per cent.

As a general proposition the expenses of a market agency, on a unit basis decreases with the increase in volume of business.

I do not know what proportion of a market agency's expenses are fixed as distinguished from variable. The expenses may not fall off in less proportion than the volume. There certainly is nothing uniform about it. From my study here at Kansas City, it is my impression that the expenses have been decreased in the same ratio as the volume has decreased.

Unit costs which I have in my study would increase if the volume would decrease, and the cost in the aggregate would remain the same. The unit costs would decrease if the cost in the

aggregate would remain the same and the volume would increase. There is then again a variation possible in the aggregate cost, if one went up and the volume remained the same, the unit cost would increase. If the aggregate cost went down and the volume remained the same, the unit cost would decrease. If efforts to increase business result in expenditures for business getting and maintenance and have the effect of increasing volume, some unit costs might be lower. The unit cost of business getting and maintaining would increase. The net result might be an increase in cost.

The market agencies apparently spent more money in 1931, to get business, and got less than they did in 1929.

The biggest decline in receipts since 1929 was in hogs. The decline in cattle was not nearly as great. Naturally it would affect different firms in different ways. Firm No. 4 handled 15,620 head of cattle and calves in 1929 and 21,331 head in 1931.
1266 Increases took place in cattle and calves for Firm' No.' 4, 6, 7, 14, 15, 20, 23, 25, 26, 30, 42, 48, 54, 55, 62, 65, 66, 70, 71, 78, 79, 83, 10, and 36. No firm showed an increase in hog volume. Firms Nos. 5, 7, 13, 15, 18, 44, 48, 54, 55, 73, 75, 76, 79, and 84, and 10 showed an increase in sheep receipts.

Impressions that I had gathered from hearing testimony are to the effect that markets compete with one another and individuals compete with one another in and among commission firms. It is my understanding that markets are competitive each with the other and that individuals operating on the same market compete with each other for business. To a reasonable extent it is necessary for a market agency to protect its patronage if it wants to retain it. We must always remember that the shipper has to pay for it and he apparently is paying to have himself convinced as to what place he wants to ship it or to what individual he wants to ship it to.

I have a general recollection of the law of diminishing return. It is very patent that if costs increase for any reason whatsoever and the income remains stable, the return to the individual is going to decrease.

As to a shipper, the volume that a commission firm would get would have no interest to me whatsoever. The question as to the service which they render me would be the most important in my mind. Comparing the business with that of brokers and others handling securities, I believe the matter of giving advice through circulars and statements is overdone.

Page 31 shows that for Firm No. 4, the per cent of business getting and maintaining expenses to income of all species is 32.9 per cent. The income per car for cattle and calves for

that firm is $18.66 and the cost, as computed, is $17.85. The difference would be 81 cents net income per car.

Firm No. 6 had business getting and maintaining expense amounting to 18.5 per cent of gross income. The firm had an income of $19.01 per car and a unit cost of $20.39 per cattle and calves. The selling and buying per car, in case of Firm No. 4, is $4.34 and for Firm No. 6 it is $8.94.

Firm No. 4 had business getting and maintaining expenses in the amount of $7,032.00. Firm No. 6 had business getting and maintaining expenses in the amount of $2,151.00.

1267 I cannot state how much the volume increased as a result of the expenditure for business getting and maintaining in the case of any single firm or for all firms collectively. I believe that the effort and expense involved in going after business in the case of these collective agencies are justified only in the event that it may be proven that the result was to produce business which actually produced profits sufficient in aggregate amount to compensate for the expense of getting it. No expense is worth the making of it, if it does not produce at least its equivalent in income.

The income which would accrue to the firm, after all the other expenses, not including business getting and maintaining were taken care of, is what I have in mind. The increase in volume would possibly decrease the other unit costs. The cost of getting a customer can be determined at the time he ships his first consignment. It does not make any difference when he withdraws his patronage. The only way, however, in which the cost of getting that patron can be determined is by keeping a minute detail of everything that is spent to get that customer to come to the business.

Even if the amount of a customer's consignments is known, the value of his patronage cannot be determined because he may produce gross income for the concern by encouraging other patrons. I have placed no value on the patronage lost to the Kansas City market as evidenced by the volume statistics relating to the year 1929 and the year 1931.

In the case of firm No. 6, nothing was included in business-getting and maintaining expenses for the operation of an automobile or for automobile depreciation. That was not found on the books, unless it was buried in travel expense by way of rental of automobiles. If R. H. Lewis and Colonel Flournoy, the operators of this business, have automobiles and utilize them in the business, their expense is not shown on the books and was not considered in the ascertainment either of total costs or business-getting and maintaining costs. There was no automobile shown for firm No. 4.

Where travel expenses related to the appraisal of livestock for marketing, belonging to attached customers, that was included among the business-getting and maintaining expenses. I
1267 included in business-getting and maintaining expenses all the expenditures for Exchange purposes, such as assessments for the transportation fund, the collection that is paid in by respondent agencies to refund any moneys that the Exchange has advanced in connection with this rate proceeding, and all other items of expenses, including membership.

The schedule on page 20 of Government Exhibit 115 represents the salary division as made on the questionnaire and takes in particularly that part of it which was allocated to country trips, circulars, and correspondence, etc. Those items include such correspondence which had to do with business getting, or correspondence which had to do with the actual selling of the animals. It included all time devoted to the market reports. The segregation is not made on the questionnaire between the time involved in appraisal trips as compared with the time involved in going out to solicit business. The whole of it is included here under the category of business-getting and maintenance expense. Of the $188,392.44 representing business getting and maintaining salaries, about $152,000 was allocated directly to the various species, about $125,000 went to cattle, about $17,000 or $18,000 went to hogs, and $13,000 went to sheep. The remainder was distributed to species on the basis of gross income less seconds. The amount of indirect expenses distributed on the basis of gross income, was, as to salaries, approximately $32,000. Of the other expenses totaling $283,756.40, $57,475.67 was allocated directly to species. The remainder was allocated on the basis of gross commissions. Including both salaries and nonsalary expenses, 45% was directly allocated and 55% indirectly allocated. The distribution of salaries which was made directly shows a ratio of 80% to cattle, 12% to hogs, and 8% to sheep. The indirect ratio of gross commissions less seconds shows 78% for cattle and calves, 16% to hogs, and 6% to sheep. In further subdividing and segregating business-getting and maintaining expenses in the differential study 115–A, I used gross income less seconds. The same method was used in distributing within the species as was used for the indirect expenses in distributing to species. That method of distributing indirect expenses would maintain the existing differential. The cost study would certainly aid in accomplishing the purpose
1269 of testing the equity of justice of rate differentiations.

The distribution of this expense is made on the basis of gross income, as it was derived from the existing tariff and the same ratio as is established by the gross income, which is pro-

duced by the tariff is applied to the indirect expenses. Necessarily the expense follows the ratio of gross income. If all costs were distributed on the basis of gross income, and all net profits and all net losses were adjusted into the cost, the results would be equal income and equal cost on a unit basis. I believe that the method is correct in the light of other information which I have. What I had in mind was the fact that the individuals showed in their distribution on the questionnaire that the value of the services which they spent in the field were broken on the ratio of 80, 12, and 8. Based on the figures which I used as to the per-head value of the different species, the approximate relationship in value would be 78, 12, and 10. It would compare very favorably with both the direct ratio and the indirect ratio used in these cost studies. The ratio on the direct salaries was 80, 12, and 8. The ratio on the indirect expenses was 78, 16, and 6. Those figures as to value refer to value of animals on farms as we obtained them from the Drovers Telegram. A test was made in Chicago on the market there, and the figures per head were very close to what the valuation on the farm was. That test was made in the early part of 1932.

Using the same value for head coming in each mode of arrival would apparently result in a ratio very much similar to the ratio now existing in gross income. I would use the same value for the same kind of an animal no matter what the method of arrival would be. There would be no ratio of difference as to value of animals, even considering a different number of the same kind of animals within a firm. The only thing that would destroy the ratio is the varying number of animals as between species.

In the distribution of indirect risk expense, we assigned for the year 1931 certain specified amounts to cattle and calves, to hogs, and to sheep as to each individual firm as representative of the shares of the total expense relatable to those species. That is the only place where we use such a method of distribution. The ratio having the value constant and having the volume within a year constant would not change. A distribution
1270 of all expenses could be made on the basis of ratio of animals of a particular class to the value of all animals of all classes, and the expense could be distributed to the mode of arrival accounts in the same way the value of the animal remaining constant for all modes of arrival. It would be distributed in the same way if I kept the same values. If I varied the values, it would not be distributed in the same way.

In making the assignment or distribution of indirect expenses, I used all the knowledge and information available to me which I thought was pertinent. It was a matter of judgment in deter-

mining whether it was pertinent. In connection with the recapitulation of risk expenses in Exhibit 115, the cases shown on page 27 are mostly items of adjustments for estrays. There may be in there items of adjustment on a refused purchase in a small amount.

No bond expense is shown for firms Nos. 1, 34, 37, and 88. I made no investigation to determine whether those firms had bonds on file.

I did not include any item for insurance having to do with liability for loss and damage to livestock. I followed the Secretary's order in that respect. I included an allowance for public liability and insurance in view of paragraph 152 of the Secretary's order. However, the quotation, as follows, "An allowance of 10 cents per car should be sufficient to create a reserve out of which may be paid those losses which prudent management cannot prevent," is possibly subject to another interpretation. I included an allowance for it at 10¢ per car. I did not get any quotations as to its actual cost. I included insurance accruals covering employees' compensation, mortgage and theft, public liability, and furniture and fixtures. My attention has not been called to any other insurable risks. I have heard testimony along the line of risks which are not insurable. The reason no rates can be found is because they are noninsurable risks. Of the $47,000 risk expense, approximately $23,000 is allocated directly to species. $15,864.60 was distributed to cattle and calves, $2,851.78 to hogs, $4,121.98 to sheep. The remainder is distributed indirectly on the basis of head times value. The proportion of the $24,000 distributed indirectly was $18,679.37 to cattle and calves, $4,029.70 to hogs, and $1,454.24 to sheep. In distributing public liability insurance drive-ins were reduced to a per
1271 car basis, using the same number of head as Mr. Roberts used in his calculation. The information as to the income per head with respect to calves and cattle is contained on pages 53 and 54 of Government Exhibit 115. The amounts per head vary with each firm and with each mode of arrival. I did not calculate if for the market as a whole because averages mean nothing to me and I wanted to avoid an argument similar to the one which we had in the previous hearing. A normal is much more satisfactory in my opinion. As to what would be the normal income from calves, that will be a long-winded process to determine that. One firm has a per head income of 20¢, another firm has an average income between 28¢ and 29¢, 5 firms have an average income running between 29¢ and 30¢, 9 firms have an average between 30¢ and 31¢, 9 firms average between 30¢ and 31¢, 9 firms average between 31¢ and 32¢, 9 firms average from 32¢

to 33¢, 9 firms average from 33¢ to 34¢, 7 firms average from 34¢ to 35¢, 2 firms range from 35¢ to 36¢, one firm averages between 38¢ and 39¢, and one firm averages 39¢ and over. The normal falls between 30¢ and 33¢. Out of a total of 57 firms, 36 firms show a per head income running between 30¢ and 33¢, which indicates that normally that is where the charge is going to fall. I have not eliminated any firms in determining the normal. I gave them all consideration. The normal can be a range rather than a definite figure. It can be made a specific figure. It would require a considerable time to study the details of all of these firms to find out which specific figure in that bracket from 30¢ to 33¢ would be more closely to normal. In arriving at a normal for a firm judgment would not enter into the question at all in so far as income is concerned. An average means nothing. In connection with the normal income for calves, that covers a range of 4¢. The total commissions received for the species calves in 1931 was $90,681.24. The number of head of calves corresponding to that income was 284,759. That is an average income per head for the market of 31 8/10 cents. Referring to paragraph 116 of the Secretary's order of May 18, 1932, and succeeding paragraphs, I cannot identify the two firms whose expense for "Yarding Salaries and Expenses" was less than 50¢ per car on straight cars. The Secretary's order in Section 113 indicates to me that a recalculation was made by the Secretary from which this table was taken. I haven't the figures that were used in the tables in paragraphs 116, 117, 118, 1272 119, 123, or 126. Similar tables can be made up and recalculated on the basis stated by the Secretary in paragraph 113. As far as the results of making up those tables are concerned, I have to rely on the statement of the Secretary. I have made no computation of that kind. The method is stated here according to the methods of arrival on the basis of income derived. There was not necessarily a different cost study prepared. The cost study that we entered could have been used and the composite shown therein, adjusted to modes of arrival on the basis of income derived from the existing rates. In the Omaha case no cost study was made. The basic facts were put into the record and a calculation was made. I cannot see where it is a denial of any legal right which these individuals may have if they do not have an opportunity to cross-examine with reference to, and test the accuracy in this hearing, the cost study and the methods of cost distribution and segregation eventually to be employed. I do not interpret the Secretary's order to mean that he did not use this study which we made. As I interpret it, he took our cost study and made up a differential distributing those composite valuation costs shown in there to mode of arrival on

the basis of income derived. Of the $118,082.32 for administrative and general expenses, $3,300.31 was allocated direct to species and $114,782.01 indirectly to species on the basis of account sales and purchase, owners, and drafts. It may be that I distributed administrative and general expenses in cost study 15 on the basis of gross income. That is the testimony on page 2,456 of the record of the former hearing. My statement on direct examination to the effect that I used the same basis for distribution of indirect expenses in this cost study as I used in the former cost study was incorrect to that extent. The amount of office and administrative salaries allocated directly is $41,202.72, of which $33,486.13 is applicable to cattle and calves, $3,555.76 to hogs, and $4,160.83 to sheep. The indirect expenses assigned amounted to $246,328.64. $171,415.83 was allocated to cattle and calves, $53,108.47 to hogs and $21,804.34 to sheep. The direct expense is distributed to the ratio of 81, 9, and 10. The indirect is distributed in the ratio of 68, 23, and 9. From this calculation it is evident that the segregation of indirect expenses finds no substantiation in the same manner in which I justified my distribution as to business getting and maintaining
1273 expenses. If the indirect expenses had been distributed on the basis of gross income the distribution would have been on the basis of 73% to cattle and calves, 17% to hogs, and 10% to sheep. The distribution on the basis of gross commission on indirect office and administrative salaries would have been $179,820 to cattle and calves, $41,876 to hogs, and $24,633 to sheep. There are combined in the cost study, Government Exhibit 115, the total amount of account sales and purchases 267,660, owners 274,515, and drafts 673,061. Under my method in the distribution of these expenses the influence of drafts was greater than the combined influence of owners and account sales. From the evidence I have heard in this hearing I have come to the conclusion that there is a very little difference between cattle and calves as a composite item delivered by truck as distinguished from those delivered by rail. I have particular reference to Mr. Ecton's testimony. I have knowledge also of the animals which come on this market from observation in the yard on different occasions. Also I have made an examination of account sales in some instances. From all that information I have come to the conclusion that there is little difference between the value of animals no matter what the mode of arrival. I reached the same conclusion as to calves delivered by rail and by truck and as to cattle delivered by rail and by truck. This same is true as between cattle and calves delivered in straight carload consignments and mixed consignments or in trucks. I have mentioned the sources and extent of the information which led me

to reach these conclusions. In analyzing account sales we must make mathematical computations. It is more than a perfunctory eye examination. I have noted on examining account sales that no matter what the mode of arrival is, each class of cattle comes in all ways. I made no calculations on any market outside of the test which I made at St. Joseph on the relative value of animals. That test disclosed that no matter what the mode of arrival is, cattle, calves, hogs, and sheep run about the same. I made no mathematical test as to ratio within the species. However, I have observed that all classes of animals come in all modes of arrival. A test can be made within the species as well as for the species. I have not made any test within the species as to the varying values of head by mode of arrival.

1274 The range for selling cattle in his firm, being No. 46, is from $5,800 to $1,980. The $5,800 man is an owner-salesman, and the $1,980 man is a non-owner-salesman. For buying cattle the range is from $4,200 to $1,200, one buyer being an owner who gets $2,400, the other two buyers, being non-owners, one of which gets $4,200 and the other $1,200.

For John Clay & Company, Firm No. 54, all individuals are non-owners. No. 1 sells cattle and is also manager and gets $12,000 a year. There are five other salesmen. The lowest of those who worked only for a part of the year was paid on the basis of approximately $200 a month. Another who worked for a part of the year was paid on the basis of $250 a month. Two individuals bought cattle and they received $5,760 for a year's work.

Wherever it was possible to segregate selling and buying they were shown separately. The individual in John Clay & Company who is cattle salesman and manager spent in selling time only 25 per cent of his total time and in buying only five per cent of his total time. Twenty-five per cent of the $12,000 was allocated to selling cattle. Five per cent of the $12,000 was allocated to buying cattle. That same process followed through for all cattle salesmen and for all cattle buyers. The proportion of their time and the salary which they received which they allocated to selling and buying was so distributed. The $3,000 allocated to selling was distributed to all cattle combined with other salesmen on the basis of draft and head. The total amount of selling salaries for that firm was $17,250.50 which was distributed as follows: to straight rail, single ownership, $9,864.96; straight rail, plural ownership, $2,141.05; mixed rail, No. 1, $2,086.40; mixed rail, No. 1, plural ownership, $1,216.80; mixed rail, No. 2, single ownership, $147.97; mixed rail, No. 2, plural ownership, $69.88, and truck-ins, $1,165.14. About five per cent of the head sold by this firm represents truck-in heads. The sec-

onds and splits are also included in that. About 6.8 per cent of the selling cost represented by salaries was allocated to truck-ins. All salesmen handling all the cattle and all salesmen's salaries were grouped into one amount. The net result would be that if a salesman did handle only one mode of arrival, a part of his salary was theoretically at least transferred to another
1275 mode of arrival, and the salesman handling that other mode of arrival alone was theoretically at least transferred to the particular mode of arrival which the first salesman sold. Under such a theory $204 of the $12,000 man's pay was transferred to truck-ins. It would not be true that the species coming in as truck-ins would be surcharged, because that individual devotes his time exclusively to the larger rail consignments, for the reason that a similar shift is made from the individual selling truck-ins to the straight rail, which would offset at least in some measure, and possibly more than offset such a shift from rail to truck-ins. If all of the salesmen who get $3,600 or less are allocated to the drive-ins, then truck-in selling cost should be about $4,200 to $4,300, and there should be a shift of selling costs of rail consignments which would increase the truck-in costs to an amount greater than $55.08 per car. The reason for that $55.08 cost on truck-ins is very apparent. In the case of straight rail, single ownership, there are two cars per consignment per owner. In the case of truck-ins there — ten owners to an equivalent car. It is very apparent that the cost of handling truck-ins is multiplied very greatly, because of the fact that each consignment contains a very small proportion of head compared to the straight rail, single ownership consignments.

If the salesmen receiving over $6,000 spent the most of their time on rail consignments and the lower-priced salesmen spent most of their time with truck-ins, one shift would not offset the other under my method of distribution. The effect of it would be to transfer from the rail selling to the truck-in selling to the extent of about $3,000. The rail cost would go down and the truck-in cost would go up. The time and money which the high-priced salesmen spend on the rail stuff totals $12,630. The time of the three low-priced salesmen which they all spent on truck-in cattle would amount in money to $4,162. The differential sheet shows that there is allocated to truck-in selling $1,165.14 in our study. Under the theory that the low-priced salesmen spent all their time on truck stuff, there should be $4,200 transferred from the expense of handling rail stuff to the expense of handling truck-in stuff, which would increase the truck-in costs about $20 per equivalent car.

If a shift is made from one mode of arrival to the other for no particular reason whatsoever, certainly it is wrong. That

was not done in this case, however. The time of the
1276 $12,000 man was split 95 per cent to the commission business and five per cent to the loan business. Twenty-five per cent went to selling cattle and calves; five per cent to selling sheep; five per cent to buying cattle and calves; five per cent to yarding cattle and calves; 8 per cent to cattle and calves, country trips; and 8 per cent to cattle and calves for circulars, correspondence, etc. One per cent of his time went to hogs; one per cent to sheep; 30 per cent to cattle and calves for general supervision; two per cent to hogs for general supervision; and two per cent to sheep for general supervision. The five per cent of his time devoted to yarding, was distributed on the basis of drafts. His salary was grouped with the yarding salaries and the whole was distributed on the basis of drafts. About 20 per cent of the total yarding salaries was allocated to truck-ins and among those total yarding salaries was $600 out of this man's salary. The eight per cent of his time expended in country trips relating to cattle and calves was distributed on the basis of gross commissions, less seconds. About five per cent was allocated to truck-ins. The total head of drive-ins was about five per cent of the total selling head.

The 30 per cent of this man's time represented by general supervision of the cattle and calf business was grouped with all of the other administrative and general salaries and office salaries, and was distributed to the mode of arrival on the basis of account sales, owners, and drafts. On that basis about 27 per cent was applied to truck-ins. It does not follow that I applied 27 per cent of this cost element representing supervision to five per cent of the headage in the instance of this particular firm. Administration applies not only to head, but also to owners and to account sales. The fact is that there are 1,687 owners or about 33⅓ of all the owners ship their livestock by truck. Twenty-seven per cent of the office and administrative salaries was allocated to handling truck-in consignments, and in those truck-in consignments there were 5,775 head, 3,178 drafts, and 1,687 owners and account sales. The time of the employee Stark, who applied 100 per cent of his time to the office work for this firm, was distributed on the basis of account sales, owners, and drafts. His expense went into the office and administrative salaries, 27 per cent of which is allocated to truck-ins.

1277 In all cases the total functional cost was determined by species and within the species they were distributed on the basis which I have heretofore stated. As to Firm 53, there is a cost of $103.11 as against an income of $51.60 on mixed plural ownership cars containi*gn* more than one species. That was arrived at by the same manner and method which I have previ-

ously described. It costs that company about $26 to handle every car it gets. The one car coming mixed rail No. 2, plural ownership, is unusual in this respect. It had 71 head, with 43 drafts, 16 owners, and 16 account sales. In Firm 25, the calculation shows a cost of $17.95 on mixed plural ownership cars, as against an income of $24.86. The reason for that is apparent because there was one car with 32 head, two drafts, and one owner. The ratio would not have been the same if the headage basis had been used for distribution where I used the gross income basis. I used the gross income method only in distributing soliciting salaries and business-getting-and-maintaining expense. It was in the distribution of functional expenses of soliciting and business-getting-and-maintaining that the seconds were eliminated and the distribution made on the basis of the remaining gross income. On the cost per car of cattle and calves on page 16 there was first determined a ratio between the per car cost and the per car income. That ratio was then applied to all modes of arrival. The reason I did not apply that same ratio to the functional expenses was that it would maintain the differential as it exists today. Our purpose in making this differential was to test whether or not the existing differential was correct. A differential based on the distribution of expenses by way of gross income can be used as a guide in determining what a tariff should be, as well as a distribution such as we have made here, in the light of the other testimony which may be given as to the relative difficulty of handling the same same number of head or cars coming in the various ways. Any differential study can be used as a guide. I did not relate the work which I did and the methods which I adopted to the record and testimony given in this hearing and in the former hearing.

In the comparison of salaries of salesmen and buyers in Exhibit 115, it was my intention to include the salaries of non-owner salesmen and buyers as they appear in the blue audits. In

1278 determining the volume handled on an annual basis in Exhibit 115, I could have segregated salesmen from buyers. There was no particular purpose for not segregating them, except that the salesmen and the buyers perform the same function in some cases. Their time was not divided between the selling and the buying functions in all cases in the questionnaires. "Cars per salesman" means cars per salesman and buyer. I took into consideration the proportion of the time of the particular individuals devoted to selling, buying, and yarding. I did not relate the time either to a 24-hour week or a 72-hour week. I do not understand that a salesman in distributing his time on the questionnaire took into consideration only the time for which the market was open. He may perform selling functions previous

to the time that the market opens, and he may perform selling functions after that time. We took only such time as was allocated to the selling function, buying function, and yarding function as shown on the questionnaire. The purpose of this was to see how the policy of the firms varied with respect to selling and yarding. We have found that some firms maintain a policy of having as few salesmen as possible with as much yarding assistance as an individual needs. Other firms have the policy of having a lot of salesmen, and very few yardman, making the salesmen do all the yarding function. Another purpose was to see how many cars per individual could be handled in selling time, buying time, and yarding time only.

In the case of Mr. Reed, who spent 25 per cent of his time in selling cattle and calves, he is the equivalent of one-quarter of a salesman for a full year on the basis of this schedule in my cost study. If we assume that the market had a 24-hour week operation as far as this salesman is concerned, he would not actually amount to three-fourths of a salesman on the basis of his questionnaire. He would amount to one-fourth of a salesman. We did not ask these salesmen to operate their selling function time into its possible component parts. We are establishing here a new base, 100 per cent for the full rate-making time and dividing that into sub-fractions. We asked these salesmen not for a division by sub-functions, but a division by functions. As I understand it, they gave us the proportion of the time which they spent on the selling function. The questionnaire speaks for itself with respect to what was included under each one of the functions.

1279 In the case of John Clay & Company, Firm No. 54, the blue audit shows that there are six individuals whose title would be cattle salesmen and two cattle buyers. The same number is listed on the questionnaire. The statement in the schedule in Exhibit 115 shows the volume handled on an annual basis and that 4.67 would represent the proportion of the time of the individuals distributed to the selling and buying functions. To the function cattle selling or buying, nine individuals devoted at least a part of their time. On the blue audit of Firm No. 56, two individuals carry the title of selling cattle. No 1 devoted 20 per cent of his time to selling and No. 2 devoted 35 per cent of his time to selling. No. 1 devoted 10 per cent of his time to buying and No. 2 devoted 15 per cent of his time to buying cattle. The office facilities expenses, amounting to $3,600, was paid to Cassidy-Southwestern. I am inclined to think that the yard employees of Cassidy-Southwestern did not help to any extent in the performance of the selling function, for the reason

that the full 100 per cent of office facilities expenses is allocated to bookkeeping. There is one full-time cattle yardman in this firm, with another part-time cattle yardman. If there had been trading or working back and forth as between the yard and office that situation would have been brought out in this questionnaire.

In connection with Firm No. 56, I show eight-tenths of a salesman and buyer as handling the total volume of the firm. That is the proportion of the time of these two individuals which they spent in the selling function. In the blue audit of Firm No. 26, individual No. 7 is listed as a cattle salesman; individual No. 2 is a cattle salesman; and individual No. 9 is cattle buying. The questionnaire shows that individual 7 spent 20 per cent of his time selling cattle, individual No. 2 spent 45 per cent of his time selling cattle, and individual No. 9 spent 10 per cent buying cattle. Individual No. 7 spent two per cent of his time buying cattle, and individual No. 2 spent 5 per cent of his time buying cattle. My schedule shows .82 of a salesman or buyer handled total volume of cattle and calves. That is the proportion of their time when they spent in the selling and buying functions. Firm No. 83 had eight individuals listed as selling or buying cattle and calves. Individual No. 1 spent 40 per cent selling cattle and .5 per cent buying cattle. Individual No. 2 spent 53 per
1280 cent selling cattle and 5 per cent buying cattle. Individual No. 4 devoted 80 per cent to buying cattle, and individual No. 17, 90 per cent to buying cattle. Individual No. 7 spent 45 per cent of his time in selling cattle, and individual No. 20 spent 77 per cent of his time buying cattle. Individual No. 21 spent 77 per cent of his time buying cattle. Individual No. 22 spent 30 per cent in selling cattle and 40 per cent in buying cattle.

For Firm No. 84, the blue audit shows that five individuals are listed as cattle and calf salesmen or buyers. Individual No. 1 spent 50 per cent of his time in selling cattle and calves. Individual No. 2 spent 40 per cent in selling cattle and calves and eight per cent in buying. Individual No. 4 spent 45 per cent in selling cattle. Individual No. 6 spent 25 per cent of his time selling and five per cent in buying. Individual No. 7 spent 70 per cent in buying.

On page 84 of Government Exhibit 115, it is shown that Firm No. 83 had 4.41 salesmen and buyers, and Firm No. 84 had 2.43 salesmen and buyers.

I did not gather any statistics whatsoever bearing on the weight per car for any given species delivered to the market or any individual respondent. I did not get that information either for species or within the species. We ascertained that the charges

had been paid as assessed, but I did not ascertain the relative burdens placed on the separate categories of animals moving under the different service costs. I did not assemble that information because in my opinion the percentage of commissions to the gross value has absolutely nothing to do with a reasonable charge based on reasonable costs. I believe that this record shows that in 1929 the commission on a ratio to the gross value of livestock was less than one per cent. Information has come to me that it will run between three and four per cent for 1931. The reason for the change is a drop in the price of livestock. I do not know whether there should be any variation on account of the relative ability of the traffic to pay as between the modes of arrival. All that I know about the ability to carry or stand the burden of the charges at the present time is what I have gathered to the effect that the farmer can spend just as little as possible. I passed not on the reasonableness of these costs, but made the cost studies on a unit basis, as we could best make them.

1281 REDIRECT EXAMINATION

Comparing drafts and consignments as the unit for calculating the revenues, under Tariff No. 3, the draft unit would bring in the greater revenues.

I stated that the distribution of the indirect cost on the basis of head and draft would cause the cost per animal to decrease as the animals in the draft increase.

Previous to the St. Louis hearing, Mr. Burns and I went over the instructions and changed them slightly from what they were in Government Exhibit 14–A. I think we had them printed, but I do not have a copy of the revised instructions with me. On cross-examination, I described the most important changes that we made. I requested of the Exchange a statement showing all amounts paid into it by its members and the purposes for which paid. I received an estimate, but not anything which purported to be an accurate statement.

When I said that the Secretary has spoken as to insurance accruals, I had reference to paragraph 154 on page 86 of the Secretary's Order. From an accounting standpoint, the criterion as to the cost of mortgage and theft insurance would be what the firm actually paid rather than what the firm should have paid.

If multiplying the units by the rate gave you a higher figure than the amount actually paid that is not in any true sense an accrual unless the accrual will sooner or later resolve itself into an actuality. If it does not resolve itself into an actuality, it would be subject to the term of reserve, which would partake of

the nature of a reserve, for a liability, which is a true part of the earning of the company. An accountant would not determine an accrual for a risk as to which insurance is not obtainable. The only thing the accountant could do, under circumstances of that kind, is to get as much history of the particular kind of loss as he could, and having that history he might set up a reserve to cover such an accumulation of losses over the life of a firm. After that is done, if an insurance company, which had never insured any such risks, would state that it would charge so much for it, the accountant would stick to the facts and use the reserve method. I know of no form of insurance covering the liability of a person to himself for injuries he may do himself. In my
1282 opinion the so-called liability of a commission firm to the owners of that firm for injuries received by owners in the course of their work with the firm would fall in that category.

On the St. Louis and Chicago markets, the values of the Exchange memberships were determined on the basis of sales that had been made in the immediate past. They were $600.00 for St. Louis and $750.00 for Chicago. In St. Paul we had full access to the Exchange books and the value that we determined was $250.00.

There is a difference between the practicability of decreasing fixed expenses to take care of the decline, which represents a temporary fluctuation and the decline which represents a permanent response to general changed economic condition. For example, rent is a fixed expense. Let us assume that five years ago a firm handling 10,000 cars paid an annual office rent of $1,000.00. The fixed cost for rent was 10 cents per car. If today that firm handles only 1,000 cars the fixed cost would be $1.00 per car. In the light of past experience, that company should have taken some steps to get smaller quarters and decrease its fixed rental cost. In the case of rent, it is a difficult thing to effect a decrease in that cost. If salaries are classified as a fixed expense and the company must maintain a certain fixed organization to handle the volume of a particular size, the same study must be made with respect to salaries.

I know there is a great deal of unemployment in the United States and that the depression exists prettly largely throughout the civilized world. If a company wants to survive, it cannot carry on a policy of maintaining a fixed organization under the decreased volume for any length of time.

If a company has a species of monopoly in the service it sells and it elects to pursue the policy of holding on to its personnel, after it has suffered a greatly decreased volume, and there is

available a substitute service, it is my opinion that the substitute service would be sought. The volume at the Kansas City market was less in 1931 than it was in 1929. The amount of business getting and maintaining expense was greater in 1931 than in 1929. If the volume keeps on going and the fight for volume keeps on growing more and more intense the cost per car would get to such a place where it would consume any profit for any firm and result in losses in all firms. It might reach the situation where they were all after business, and there
1283 would be no more business to get. Somewhere in there a reasonable halt would have to be made in a regulated industry. Where there was no regulation, a situation of that kind could only go until some of the companies could not stand it any more and would have to go out of existence. The efforts of business getting and maintaining would not increase the total volume of livestock coming to market, if all the livestock produced in the country for the purpose of being marketed, is coming to market. If the supply coming to the market now satisfies the consumer demand, to spend more money to bring more livestock to the market would be money spent for nothing. Business getting and maintaining efforts, which represent competition as between the commission men on two different markets, diverts livestock to some extent from one market to the other. I do not think it would be a major part of the result. The only reason I can see why an individual should go to another market would be because he feels that on that other market he can realize a greater net return.

From my experience, I am led to believe that the competition, between agencies on the same market, is quite destructive.

I was introduced to an individual at St. Paul, who lived at St. Cloud, Minnesota. He had a car load of livestock to ship to the St. Paul market. Six solicitors appeared on the scene at the same time trying to get that car. In my opinion that is money expended to fit the fancy of a particular individual and is a waste. I have in mind the testimony of Mr. Hobbs as to the methods that are used in soliciting business on this market, and in my opinion that type of soliciting is destructive. The more that is spent to divert livestock, the greater is the expenditure, even on a per unit basis.

To the extent that business getting and maintaining efforts of market agencies at the Kansas City stockyards merely tends to divert the volume from one firm to another, those expenditures increase the cost of marketing. I testified, that in my opinion, there was no direct connection between large volume and large net profits.

I do not think methods and practices of the various markets vary to any material extent.

I have come across situations where firms of relatively low volume had a relatively higher profit per unit and
1284 have come across firms having relatively large volumes whose net profits were relatively small. I have found the same condition to exist among the market agencies at Kansas City. Those conditions are not peculiar to the livestock market agency business. In a firm having a small volume and a substantial net profit, the expenses are very closely controlled. The expenses are not very well controlled where a company with a large volume has a small net profit.

If, as to Firms Nos. 4 and 6, there has been substituted for the actual amount of salaries classified as selling and buying salaries only, the amount prescribed per car by the Secretary in his order to every car handled by these firms, the result would have been an adjustment by way of increase in expenses for Firm No. 4 of $443.00, resulting in a net gain of $555.00. The same computation applied to Firm 6 would have decreased the loss of $2,138.00 to $280.00. On the species hogs, the per car income for Firm No. 4 was $12.45 and the per cost was $15.53. For Firm No. 6, the income per car on hogs was $19.78 and the cost per car was $30.85. For sheep the income per car on Firm No. 4 was $17.30. The cost per car was $28.63. For Firm No. 6 the income per car was $29.44 and the cost per car was $24.90.

Business getting and maintaining salaries for Firm No. 51 is $6.09 a car; for Firm No. 53 $8.14 a car, and for Firm No. 75 $4.58 per car for cattle. The business getting and maintaining expenses, other than salaries, are for these three firms $2.06, $3.74, and $2.08, respectively. For Firm No. 88 the salary allocated to business getting and maintaining is 28 cents per car, and the other expenses $8.58 per car.

It does not appeal to me, in view of a charge of approximately $18.00 to $20.00 a car commissions, that the percentage of money spent for business getting and maintaining is reasonable. I use the word "reasonable" not from a rate making viewpoint. I mean from the viewpoint of an accountant and an administrator of a business or an individual who would have the establishment of the policies of the operation of a business.

The expense of business getting and maintaining efforts cannot be allocated to new business nor (to) the maintaining of the existing business with any degree of exactitude. No one
1285 could point to the new business or the maintenance of the old and say that if moneys had not been spent for business-getting and maintaining things would be different. The volume

of the livestock of the commission men generally was not as good in the year 1931 as it was in 1929.

Reports that are put out by various financial institutions, financial writers, companies, and so on, almost invariably show a heavy percentage of decrease in the volume of business. I do not believe that a heavy expenditure of money for advertising and business getting is going to bring around an abrupt change. It is my opinion that people just haven't the money to buy with at the present time.

There is no magic in business getting and maintaining which solves all the economic woes. I have heard quite a number of comments on this market relative to the direct buying situation. Some shippers have the opinion that they are better served by disposing of their livestock by that method than through the employment of market agencies. For that reason they ship direct to save any cost that they can possibly save.

In my studies as represented by Government Exhibits 115 and 115A, I did not attempt to maintain the status quo with respect to the differentiation between the rates based on either species or mode or arrival within the species for the reason that I felt that the status quo as to differentiation was not correct. I was seeking to find, as best I could, correct differentials using cost accounting methods and restricting myself to cost only. There may be other factors in the picture to which we gave no consideration. I felt that the expense of business getting and maintaining was made approximately in ratio to the way the business was coming in and that was the reason for using the gross income method of distribution of that particular expense. In doing that I was not actuated by any different purpose or principle from those purposes and principles used in respect to other bases of distribution.

Whereupon the witness was temporarily excused.

1286 MR. W. T. ANGLE, a witness called by the Government, after being sworn, testified in substance as follows:

DIRECT EXAMINATION

I am the same W. T. Angle who testified in the previous hearing in this case, my testimony extending from page 1666 to page 1942 and from page 3359 to page 3549. Insofar as the policies and principles of the testimony that I gave at that time are concerned I think the same are true today. There may be some changes in the volume of livestock moving that would affect the decisions that I gave at that time. I haven't had time in the past few days to review that testimony as I would like to have

done. I have been away from the market for three weeks, up to last Friday morning, and, upon returning, I have been quite busy and haven't had an opportunity to go over the old record. The volume of receipts at our market has now changed in some respects and the volume of business we handle in any species of livestock materially affects the cost in handling it. The lower our volume drops the more difficult it is for us to do business at a given cost. The material that I put in the record here previously would be true for the most part today. The volume of sheep, cattle, and hogs going through our market place for the years of 1930, 1931, and 1932 were lighter than they were in 1929 and the years immediately previous thereto. Any changes in my testimony proviously made would be hinged on that change of volume rather than any principles that I previously expressed as applying to the commission business as we carry it on through the Producers Commission Association. I have reference to the changes in the volume going to the market and to our firm.

The difference between the audits of 1929 and 1931 would be the cost of handling that loan service which would tend to increase our general operating expenses in the year 1931 as compared to 1929. It so happened that during the period 1930 and 1931, we had probably the most dramatic decline in both stocker and feeder and fat cattle values than we have ever had in normal times in the Kansas City market and in the Kansas City trade territory. Other than the amendment which I have made in regard to servicing loans, my previous testimony would be
1287 applicable to conditions at the present time. During the year 1932 to date we have had the increased cost of taxes on our checks and increase of our first-class postage from 2 cents to 3 cents per letter. We have had the reduction on commission charges that were made on May 19, 1932. There were further reductions in our commission charges on June 23, 1932, and they were followed by another minor cut in charges on October 10, 1932. In making adjustments in the organization to meet these cuts in income we have had a general cut in salaries. We have reduced our advertising costs by eliminating certain forms of advertising. We made the salary adjustments in June that cut our cost about $500.00 per month. We also made salary adjustments during the first 60 days of 1932 which would amount to somewhere near $500.00 per month. That was a cut resulting in savings in cost. Some adjustments were made in 1931 by way of reductions practically in every case. We put in a salary cut in April 1931 of 10 per cent on all employees and that cut lasted for five months after which the salaries were put back where they were previously. During the year there were

some minor permanent cuts in our salaries in 1931. Our budget starting July 1, 1932, calls for salary expenditures in round numbers of what it was in 1929. During the period of 1930 and 1931 our pay roll went up several thousand dollars in order to take care of the large loan business. In view of the fact that we have now discontinued indorsing loans and we have placed on our credit corporation the responsibility of passing upon these loans and the cost of servicing outside of what we can do with our agency without creating any material cost against our agency, we are able to make these reductions. Our employees are making their regular trips for soliciting purposes in the country and not to service the major portion of our livestock loans as we are handling them now with our credit corporation. Where a loan needs special attention and requires any considerable expense that cost is now accruing to our credit corporation.

Our total cost of handling our commission business commencing for the year July 1, 1932, and the following twelve months was based on about the same figures for 1929. I do not recall that there was any material deductions in the salaries for the year commencing July 1, 1932, as compared with 1929.

We have been carrying recently 27 employees and I believe
1288 the records show in 1929 that we had 26 employees. During the period of 1929 to 1932 we made some changes in our sales personnel. In some cases higher priced salesmen were employed and lower priced salesmen were relieved which tends to offset some of the reductions in salaries that have been made. We have fewer employees now than in 1931. Our number of employees varies somewhat during a year to take care of the peak volume of business.

We have discontinued our road-side advertising costs which were amounting to about $176.00 per month. We have discontinued practically all farm publications, country newspaper and livestock daily paper advertising. The amount of money we are expending on that kind of advertising today is probably not over 15 per cent of what it was in 1929. This reduction in advertising and the dropping of our road-side sign expense were practically all done about January 1, 1932. These reductions do not show up fully in our statements until July 1, 1932, due to the contracts that had not expired. We made up another budget on July 1, 1932, in line with the anticipated income due to our commission rate adjustments. Our advertising budget at the present time is less than it was in any one of the years 1929, 1930, or 1931. It is not the idea that these advertising costs particularly are permanently eliminated but more adjustments were made in our costs to assure us that we could adjust ourselves to the new commission rate and thereby afterwards pos-

sibly replace some of our advertising at times and seasons when we think it can be done profitably.

We have had some increase' cost in telephone and telegraph this year as compared with the same period last year. We had some increase in our bond cost. We are now paying the rate of $10 or $11 a thousand on our shippers' proceeds bonds whereas a year ago we had a rate of about $4.00 or $4.50 a thousand. I do not recall that there would be any material difference in the other items of expense between those now and a year ago. Our stationery, letters, letterheads, and material for market guides and publicity is costing us less now than it did a year ago or two or three years ago. Our check tax was costing us about $4.00 a day more than a year ago. Recently we arranged to have our payments of livestock made in the form of a draft which is now making that additional tax cost on our checks probably not over $25 or $50 a month, if that much. Our telephone and
1289 telegraph bill is greater in 1932 than in the immediately previous years due to the fact that we have handled more business from a distance on the inbound side of our business. This spring we placed in Kansas and Oklahoma pastures about 40,000 cattle from the southwest. We had all the costs accruing in making these contracts and the telephone and telegraph costs, the personal time of one person trying to get the pasture contracts closed. Later on we had to divide them, half of these cattle going out on feed contracts and feed yards and going back to Texas. We realized a commission income of about half what looked like would be income.

We carry a $52,000 shippers' proceeds bond. Tariff No. 3 contained in Government Exhibit 101 is a tariff which we operated on commencing May 23 for a short period. That tariff was observed by our firm until the filing of a tariff which became effective on June 18, 1932, as contained in Government Exhibit 104. That tariff was in effect until October 10, 1932, at which time only minor changes were made. Government Exhibit 103-A appears to be a copy of the tariff we put into effect October 10, 1932.

In budgeting our expense for business-getting and maintaining we have given consideration to the approximate amount of money that we want to spend for market cards and other forms of printed contact with our trade and then we have given consideration to the amount of money that we expect to expend on travel, hotel, meals, automobiles, train costs, and such as that. We have not endeavored to assess against business-getting and maintaining any definite part of these men's salaries in setting up our budget. We do not plan for the cost of business-getting and

maintaining to exceed $2.00 a car. In fact we are trying to hold it down around $1.50 on all species. I am speaking of those figures on the basis of the gross number of cars handled and the income straight across on all business and when I say that amount per car I mean on all our business with truck-ins reduced to a car basis.

CROSS-EXAMINATION

My association is still operating under a cooperative organization and any net profits are subject to prorate refunds among our membership who are patrons of the agency. We charge no membership fee. We have certain affiliated associations,
1290 such as the Texas Marketing Association. Their relationship with the National Livestock Marketing Association as described heretofore in my testimony still subsists. It has 24 affiliated commission agencies. The National Feeder & Finance Corporation is a subsidiary of the National. We have credit corporations that they contact wih our loan operations. The applicant in making his application for a loan to the credit corporation agrees in his contract to consign his livestock to our agency or some other agency on some market affiliated with the National Livestock Marketing Association. In view of the fact that the credit corporation gets all this spread in interest and we are primarily a market agency and not a loan agency we have come to an agreement whereby the expense and trouble in connection with these loans will be lifted from the shoulders of our agency for the future. We have asked them to take upon themselves the cost of making any of these loans they choose and the passing upon loans and the servicing of them to the extent of any special costs that are needed to handle them.

Mr. Dick Arnett is connected with them and Mr. John Burns is their manager. Mr. Arnett has been quite active with the Texas association in the placing of cattle and the movement of southwestern cattle. I would say that Mr. Arnett's activity has redounded to our benefit in the operation of our business only in so far that it gives an agency the satisfaction of having more volume. Mr. Arnett has had direct contact with most of these cattle that have come up to the Kansas pastures. He has been here on the market a portion of the time when they came into market. We are not paying the Texas association or Mr. Arnett anything. Mr. Arnett was active in this work in 1931. We did not give the Texas association or its membership any special consideration in the way of any agreement as to refunds of commissions or anything of that sort. The volume that accrues due to the connections mentioned and the profits thereof have been offset due to the fact that we had had to make some changes in our

personnel which has resulted in increased cost to the agency and furthermore that we paid to our national association fees to the extent that practically as I evaluate the value of the business accruing to the connections mentioned to be of no particular benefit to the association. We still pay 50 cents a car assess-
1291 ment to our national organization. That fee is larger than that at the present time and it also covers purchases as well as sales. I believe it was increased about July 1, 1930. From the commencement to the end of the year 1931 our net asset account decreased from $17,172 to $13,809. The items that can be assessed as business getting and maintaining, or keeping of business expenses, are not shown as a separate item in our method of keeping our records. The costs shown on Exhibit C of the audit of the books of the Producers Commission Association for the year 1931 show market papers, newspaper ads, circular letters, postage, specialties, and novelties, and signboards, all of which I would say were items of expense intended for the purpose of maintaining business which we had and getting additional business. I feel that the elimination of all those expenses, which would practically eliminate the contacts with our trade, would naturally result in a decline of the volume of business handled, and in addition to those items mentioned in my previous answer there is the contact of our salesmen and buyers on their trips to the country which on our records we do not set up as a definite cost of salary to those trips. We merely show the travel expense that is incident to their making those trips. Those trips cover appraisal trips not only on cattle coming to the market but on Exhibit C for the year 1931 it covers a large number of inspections made for our credit corporation to find out the condition of loans, all of which is charged to our commission business. Fifty per cent of the one item of travel alone as shown on this audit under the name of "Soliciting" represents the servicing of loans and is not for the purpose of going out to solicit business for the house. We probably handled something over 50 per cent of the cattle serviced and the others for the most part went to other Producers agencies at other markets. Some of those cattle, however, went to private commission men.

We endeavor to run the business as efficiently as we know how to run it. The board of directors is composed of men familiar with the livestock business and have some knowledge of marketing livestock. We have seven men on our board of directors. The full board meets once each quarter. They consider affairs connected with operation of the agency and look over expense accounts and income accounts. They try to hold the expenses down.

1292 I feel it is necessary to have the right class of men, not only to represent you in the selling and buying at the yards, but to make contacts in the country. I believe we had 8 cattle salesmen and buyers in 1931. No other agencies are discounting their paper through the credit corporations set up by our national association and its member agencies except those agencies which are members of the national association.

I have been inclined to feel that in the last four or five months it has been the largest direct movement in proportion to the total southwest we have ever had. There are quite a number of agencies in the corn belt which are sort of independent companies and individuals that have established range connections whereby on the range they ship their stock direct and they place it where they have an actual buyer on the range and operating what you may call a corn belt range commission business. I do not know just what charges are being assessed on an average on movements of that kind but in many cases the man that is selling livestock on the range is to my knowledge paying 50¢ per head for this service. In quite a few instances they are paying $1 per head. In some cases the man that is buying the livestock is also paying the person selling him the livestock a fee to the individual or agency that is selling the livestock. In most cases I think both the seller and buyer will pay a fee. In so far as I know the established charge for country selling of sheep has remained practically unchanged at 10¢ a head. There has been a reasonably large reduction in commission charges on hogs. It is my opinion that there has been no material change in the volume due to the change in commission charges. There has been a tendency on the part of many stockmen to feel that direct shipments would yield them more money and there has been a general tendency of stockmen, like other people that have got to pay certain expenses or costs, to rebel against any and all costs they could eliminate. The idea that commission charges, yardage charges, and feed charges were exorbitant and too high has been talked over and discussed and argued among country men. They have figured that they would ship direct just for the idea that they would have more money. I cannot say that the results have been

1293 such that for them to talk in my presence that they have really benefitted themselves any. But they have given the impression that they wanted to pass up some expenses and see if they could eliminate some costs.

I believe an application of the tariff of May 23, 1932, was made just prior to putting it into effect. I applied it directly to account sales in order to ascertain what it would do. I believe we took the first full week of business in the first month each of the four quarters of the year 1931 to make that application.

The result was a reduction on cattle and calves by rail of 10.6 per cent and by truck 5.8 per cent, hogs by truck and rail 15.53 per cent, and sheep 5.6 per cent. The only way we have ever discovered what a change in tariff structure or contents will do is to make an application of it to our business. The test would have to be directed either to the account sales that had previously been made on that particular species of livestock or from any abstract that we might have made off from those records. We filed the Secretary's tariff the last day we had to get in the mail before the order became effective. The so-called river markets in which Kansas City is included, are normally known as corn belt terminal markets. I feel that Kansas City of all these markets has more fluctuation of volume than the average market and also seasonally than any one of these corn belt markets. I might say that probably Fort Worth and Denver have the same up and down seasonal run that Kansas City gets due to the fact that they all draw off from the range country. It is my observation that Kansas City of all markets located immediately east and northeast probably gets a greater percentage of its weekly receipts on Monday, or Monday and Tuesday, than any other market in the corn belt. In order to accommodate those receipts it is necessary to have a personnel at the market sufficient to permit us to do so adequately and efficiently. I feel that it tends to enlarge costs to have this bunch of receipts on Mondays and Tuesday as well as to have them bunch seasonally. We oftentimes have to employ additional help on Monday and Tuesday and also seasonally, where as the regular force that we might have, aside from what we have to put on to take care of those conditions, would no doubt take care of it easily without additional cost if we could have the same weekly receipts arrive, either on four days, or five days. In reality we have a five-day cattle and calf market, but Friday, the fifth day, does not
1294 figure considerably in the picture as a day when any volume is handled or when you can utilize the personnel of your organization to buy and sell livestock. Generally it is the latter days of the week, commencing with Thursday, that salesmen go to the country on country appraisal trips or have their service in connection with the agencies they serve. In speaking of hiring extra help I referred primarily to yard help. We hire extra salesmen but do not consider it practical and profitable to switch in a new salesman under those circumstances. We don't find it satisfactory to put in a salesman to work for a few weeks or a few months and be a stranger to a shipper and then he is gone, as it does not work so satisfactorily for various reasons. Acquaintanceship with buyers is a distinct asset to both the buyer and seller. I have not been a salesman or buyer myself.

In the past two or three years of declining markets and slow markets the trading period has run from 8 o'clock to at least 2 o'clock in the afternoon, especially during the first three days of the week. Costs have not declined on our agency. The value of the product which we handled was taken into consideration in making a reduction in charges. In all probability the average value of rail calves is higher than trucked-in calves in view of the fact that quite a large percentage of rail calves are stocker calves with quality and sell at a higher price than ordinary dairy calves that make up such a large percentage of the local truck-in run of calves. Previous to the last few years I think it would have been true of cattle, but the increasing number of carload feeders and persons feeding 6, 8, 10, or 15 head of cattle within a hundred miles of the market which are now coming by truck would tend to offset the higher value of rail carload cattle. Previous to five years ago rail cattle would carry an average higher per hundredweight value than truck-in shipments. It is true that if we had an increase in the volume of business of a substantial character the tendency would be to reduce the unit cost of handling the livestock, and if a decrease occurred in volume it would have the tendency of increasing the cost per head, providing our cost of getting business did not change. I expressed the opinion that the rate on cattle at Kansas City in comparison with some of the other markets where I consider costs are lower was placing the market agencies on this market at a disadvantage in comparison with some of the other terminal markets.

1295 Carloadings on this market run all the way on cattle from 12,000 to 33,000 pounds and the headage all the way from 15 to 60 head per car.

There has not been any gain in our automobile account as I recall. An automobile in the commission business generally receives pretty severe use. On outstanding drafts above our bank balance in cash we pay 8% for those items until they are cleared. We carry no insurance respecting the risk of damage or injury to livestock while in our custody. Our agency had some items of that kind and they constituted an expense of operation to us. The loans of the subsidiaries of the National Marketing Association made on livestock amounting to $25,000,000 was, I think, for a period of time more than a year. And even though we do not sell all the livestock that we loan money on here at our own agency, it is generally sold by some agency affiliated with our national organization. I think it is true that an increase in volume will lower unit costs and decreases in volume will increase unit cost in the livestock commission business so long as an increased volume comes without increased cost of getting that

volume and that so long as the decreased volume handled, the getting of that business is not reduced in proportion, and the other costs of service. If the extra profit that might accrue from increased volume is absorbed in business getting costs, there is no lowering of unit costs. I would say that the commission business as conducted at Kansas City in so far as the acquisition of business is concerned is highly competitive. It is highly competitive in all its features, not only as between the agencies themselves but as between agencies on different markets and as between markets as a whole and the other channels through which livestock flow from seller to purchaser.

REDIRECT EXAMINATION

If one agency on the Kansas City market decides to spend considerably more money to get business, thereby increasing its unit costs, it may have the same result with respect to the other firms if they followed the lead and increased their costs in trying to get more business. I feel that in times such as we have had in the past few years, that it has taken more personal letters and more use of telephone and telegraph to keep in contact
1296 with our trade. They have been uneasy and desirous that we keep them posted of every little change or any possibility of getting out of their holdings, which has tended to put a little greater burden on the market agencies. When they call us up to inquire about the market, we sometimes pay for it and sometimes they pay for it. The cattle feeders naturally are more apprehensive of the market they are going to land on than the hog men. The hog man when he hears a radio report or reads a market report can fairly well ascertain what his hogs are going to bring, but when it comes to the fat cattle or slaughter cattle, they can sell anywhere from $2.50 up to $9.00 on steers at the present time. The owner of the cattle is at a loss to know whether his cattle are worth $6 or $7. He probably thinks they are worth $7 and they bring $6. In 1931 we received the regular commission charge on all business that came to our agency that carried the loan upon them. We received a certain amount of income from the inspection of these loans at the time they were set up and the cost of counting their livestock and appraising their value, inspecting the feed and possibly inspecting the abstract of chattels on file at the court house and things of that nature. We had certain costs which without a question of doubt were greater than what we received in the way of inspection charges therefor. The entire spread on the interest went to the credit association.

The tariff which we applied when we made our tests was the identical tariff that we later filed. We agreed to make such tests as we felt would give us a fair idea of what effect it would have on our income. This was done in conjunction with other agencies trying to ascertain what the same tariff would do to their business. We actually figured every account sale that we made from May 23 to June 11 on the tariff that we had in effect during the stated period, and then also on the old tariff that we had been using previous to May 23, and then we applied to all of our business during that period on the Packers and Stockyards rate that we put into effect on June 18. The results of that application were as follows: Cattle and calves by rail show a decrease on the tariff put into effect May 23 of 1.6 per cent, and the application of the Secretary's rate for the same period showed a 16.7 per cent decrease in cattle and calf commissions as compared to the tariff in effect previous to May 23. The decrease in cattle and calves by truck on the
1297 tariff we had in effect commencing May 23 was 6.1 per cent, and the decrease in the Packers and Stockyards tariff put into effect on June 18 was an increase of .7 of one per cent for that period. Hogs by rail show a decrease of 4.8 per cent when the tariff of May 23 was applied and the Packers and Stockyards tariff showed a decrease of 17%. Hogs by truck showed a 16% decrease when the tariff of May 23 was applied and the Packers and Stockyards tariff showed a decrease of 14.4 per cent. Sheep by rail showed 14.5 per cent decrease when the tariff of May 23 was applied and the Packers and Stockyards tariff showed a decrease of 18.7 per cent. Sheep by truck showed a decrease of 8.1 per cent when the tariff of May 23 was applied and the Packers and Stock yards tariff showed a decrease of 19%. The tendency to put the bulk of cattle receipts on our markets on the first three days of the week is as great today, or greater, than ever and in the case of hogs and sheep I doubt if there is any material difference in that respect over a period of time. I feel that the truck has probably had the effect in the immediate local territory of bunching receipts on certain days, especially on hogs, that we did not experience before the coming of the truck. It looks like the hog shipper in this territory gets from the radio or some source an idea that the hog market is up and they will roll 7,000 hogs by truck maybe on a Thursday or Friday just as well as on a Monday or Tuesday. In stating that the maximum rate provided in the order of the Secretary placed this market at a disadvantage with other markets, I had reference to St. Joseph, Sioux City, Omaha, and St. Paul. The fact that we have to go to the unloading docks and get our hogs and cattle is a factor of very definite cost.

The fact that we have to go to the cattle truck unloading gates and the hog unloading gates, which are from a quarter to a half mile from our pens, to get our livestock is a factor of definite cost which I do not believe is comparable to any single market agency on any market I have just mentioned. I believe our business originates at Kansas City on an average at points greater than do other markets mentioned a few moments ago, and that makes our telephone and telegraph and personal visits more expensive. Our market covers a larger area in way of length than any of the other markets mentioned, which
1298 makes it more important to have horses in the cattle yards to traverse the area, contact the buyers, and to make the best sales possible on the market. There might be some conditions at these other markets that might make certain items of expense higher than at Kansas City. We have some little losses that accumulate in our handling of livestock in the yards. If an animal gets crippled in the sorting of livestock and our cattle yards report that someone threw a gate or that the animal got caught in a way that crippled him, or if we lose a calf going to the scales in a jackpot, or someone knocks a calf in the head, there is no one to pay for the calf except our association. We try to pay for such losses that may occur in our hands and as we feel might be due to any negligence on our part. We do not pay at all for natural losses in the yard that we feel would have happened under anyone's hands. They represent a very small amount in any one year.

CROSS-EXAMINATION

The item of $1,511.96 in our audit for 1931 is the cost incurred in our loan department. The item of $2,356.34 represents the amount received on inspection fees. The amount of expense of $1,307 does not represent the cost to the association of getting the inspection fee mentioned. We are giving free subscriptions to the Drovers Telegram only to a very small extent.

The figures with respect to the application of the tariff in the Secretary's order to the first full week of business in the first month of the four quarters of 1931 show reductions as follows: cattle by rail 18.6; cattle by truck 2.8; hogs by truck and rail 14.81; sheep by truck 16.52. Those figures were taken off our records, but the extra service charges were not taken into consideration. If the extra services charges had been added they would have been more under the Secretary's order than under the tariff of May 23. The test for the period from May 23 to June 11 covered a period when our total business is relatively light. It would not be representative.

We are still maintaining our radio service, and the board of directors considered the matter and thought it advisable to maintain that service. We accept shipments from everyone who may consign them to us, whether member or nonmember.

1299 RECROSS-EXAMINATION

I considered the first full week in the first month of each quarter as a representative test period, and that would fairly represent the application of the rate. We voluntarily filed the tariff effective October 10, 1932. We are trying to get along on this tariff, and we have no particular objection to it. It is substantially the Secretary's tariff. Considering the present conditions of the livestock men of the country and all factors concerned, we are not opposed to going along on that rate until we find out that we don't think we can operate efficiently and satisfactorily. We are desirous of giving consideration to the country's ills and trying to get along on a schedule that will give consideration to the problems that our customers are confronted with. The rate we filed on October 10 made only a few minor changes in the Secretary's rate in order that the Producers Commission Association's tariff would not be at variance with the other market agencies on the Kansas City market in charging higher commissions in minor respects. We have no objection to the tariff which we are operating on at the present time, and we are satisfied for the time being with the income derived from it. We are not at the present time or in the immediate future planning to file a new schedule or raising it. We amended the Secretary's charges so that our charges would be in line with other agencies on the yard with respect to yard sales or seconds, feeling that there was little reason why our association should be charging the dealers on the Kansas City market one rate and the exchange firms another rate. We are willing to go along on such a rate as we have here for the time being until we feel conditions may change whereby there might be justification for either lowering them further or raising them from present levels.

We have never paid less than eight per cent for any of our overdrafts at the bank.

Mr. JOHN J. BACHMANN, a witness called by the Government, having previously been sworn, returned to the stand and testified in substance as follows:

REDIRECT EXAMINATION

In describing a method of arriving at a normal, my answer was confined to my own views in the matter and it

1300 must be understood that my normal was just a range within which the normal would fall. I was finding a normal composite income per unit for the market as a whole. A normal for a firm can be determined as well as it can be determined for all firms.

In cost accounting for businesses generally, unit costs are determined through the use of such methods of averaging. If there were two firms, one of which received five thousand cars of cattle, and the other five hundred cars of cattle, there would be no relationship between those two firms, and the average arrived at would not relate itself in any sense to the actual unit costs of either of those firms.

To determine a normal of costs for a function within a firm is very difficult if not impossible. A normal income by mode of arrival could be determined for the firm, and a normal of those normals for the market would possibly be more exact than a normal of averages for a firm. I did not intend to apply that to costs. I have reached the conclusion that the cost factor is more important than the value factor in making up a tariff.

RECROSS-EXAMINATION

Mr. Angle stated that the Secretary's tariff would produce under their test approximately a 16 per cent cut. That 16 per cent cut is subject to a differential of 9.7 per cent on the basic tariff which would bring the 16 per cent cut down to some extent. I have never applied Tariff No. 3 to the business of a single market agency. I personally made an investigation of the tests made by about 35 firms on which test sheets there was shown the basic information shown on the account sales. That test showed approximately an 11 per cent cut. On going through that test I noticed a nickel difference showed up on cattle, and that nickel difference would make a considerable difference in the percentage of cut.

I did not attend the conference between Mr. Burns, Mr. Elton Marshall, solicitor for the Department of Agriculture, and counsel for respondents in your office some time between July 15 and September. I spoke to Mr. Marshall about the conference when I saw him in Washington. He said that counsel for re-
1301 spondents felt that my test was wrong and he asked me whether I felt that I was right in the matter. I told him that I felt that we were conservative in our estimates of what the new tariff would do, meaning that we did not take the viewpoint in making that test that the greater number of animals should go into the higher brackets, but that we leaned rather to the other side that the greater proportion of the animals should go into the

lower brackets. I do not know just how much more consideration the cost factor should be given than the value factor in the ascertainment of rate differentials. Taking all head, no matter what the mode of arrival is, and multiplying them by $40 for cattle and calves, $10 for hogs, and $6 for sheep, a ratio is determined which breaks about at 80 per cent for cattle and calves, 10 per cent for hogs, and 10 per cent for sheep. The discussion which we had was more in the nature of an argument and academic, and not specifically for the purpose of determining what a proper basis of distribution of various functional expenses would be.

(Objection sustained to the following question: "Did you assist anyone who was engaged in the preparation of the order between the date of the former hearing and May 18, 1932, or have anything to do with any matters that concerned this Kansas City proceeding?")

"Mr. Gage: The respondents offer to show by this witness as a proper part of cross-examination that he did assist in the preparation of the order and in the accounting service falling within the range of the duties to which he has testified were assigned to him within the Department, not only for the purpose of testing the validity, fairness, and accuracy of statements previously made by him, both on direct, cross, and re-direct examinations, but for the purpose of showing that neither the Secretary of Agriculture nor in his absence the Assistant Secretary of Agriculture had anything to do with the preparation of this order or the actual determination of issues involved in the order of inquiry in this proceeding. That offer of proof is here made severally upon behalf of each of the respondents involved, and we ask a ruling as to whether or not the offer shall be granted or denied."

"The Examiner: Offer of proof denied."

1302 As shown on Government Exhibit 15, page 44, the expenses for business getting and maintaining, which does not include salaries, amount to $295,146.56. I believe that the number of firms is 64. As shown on page 24 of Government Exhibit 115, the amount of business-getting-and-maintaining expenses, not including salaries, is $283,756.40. I believe that the number of firms is 60. Expenses other than salaries, in the study of 1929, Government Exhibit 15, the exchange soliciting and membership dues were not included. That is the one difference. There is included in the exchange soliciting and membership dues all of the moneys that we could find from the books of the companies that they paid to the exchange covering radio, the time of various individuals spent in getting information to be broadcast on the radio, rate hearing, and so forth, as is described hereto-

fore in my testimony. I do not know whether it includes all expenses incident to the general upkeep of the exchange. I did not have an opportunity to examine the books of the exchange.

I do not know that there is a separate assessment of five cents a car covering the radio activities. The only memorandum I have here is that there is a five-cent charge on out cars and eight cents on in cars for the rate hearing. In Government Exhibit 115, those expenses were included under business-getting-and-maintaining. In the study made at the previous hearing Government Exhibit 15, the exchange assessments and dues were included under administrative and general expenses.

In making up my cost study, I threw all travel expense into business-getting and maintaining. In getting out our questionnaire as to the division of time, I included under business getting all country trips of any kind or character in the statement of appraisal and soliciting work in the country. I made a segregation of the time of the various individuals engaged in work on the market and included all appraisal time in Exhibit 115 as spent in business-getting and maintaining.

The figures in 1929 were about 22 percent as compared with the comparable figures of 25 percent in 1931. It is accidental if the same percentage of expense is assigned directly as compared with
that assigned indirectly under these methods of distribu-
1303 tion which I have employed. There may be a substantial
variance between the various respondents in that respect.

In response to a question on redirect examination I eliminated entirely the selling and buying shown in Government Exhibit 115 and substituted for the amount shown on the cost study an amount calculated by multiplying the number of cars of cattle by the allowance of $5.00; for hogs, $2.50; and for sheep, $4.50. That made the difference in the net profit that I stated. For Firm No. 4, the amount of selling cost would have been $443 greater than is shown in our cost study.

The total amount of selling and buying salaries, after the recalculation, was for Firm No. 4, $5,866.00 and for Firm No. 6, $2,750.00. Firm No. 4 actually expended $5,423.00 as allocated by my cost study applicable to selling and buying salaries. The total salaries of those, whose principal function was selling and buying hogs and cattle, was $7,601.65 as indicated by the blue audits. On Firm No. 6, owners' salaries, set up in the blue audits, amounted to $6,900.00 but for non-owners $2,685.50. The two owners of the firm, under the recalculations, would have received $6,900.00 less the adjusted loss, which would make it $6,620.00. That does not take into consideration the decrease in the selling cost of $1,858.00, which would further decrease the allowance if it were allocated to owners and bring the amount down to $4,762.00.

As to Firms 67 and 54, one is at the extreme low for handling cattle and calves and the other is at the extreme high.

Business getting and maintaining expenses were $1.92 per car as to salaries and $2.64 as to non-salary expenses, making a total of $4.56 per car. The only expenses classified under selling and buying were salary expenses which average for the market $5.00 per car. The total of all market costs in respect to cattle and calves was $12.63 for salaries and $5.48 per car for non-salaries, making a total of $18.11 per car. That is an average of an aggregate. The expenses are aggregated and the cars are aggregated. This $18.11 is the result of dividing that aggregate volume into the aggregate cost.

In the exhibit I do not show the average per head or per car income by modes of delivery in respect to any species for the market as a whole.

1304 REDIRECT EXAMINATION

Referring to the question and my answer on page 1711 of the transcript I certainly did throw all travel expense, regardless of whether that showed cost of soliciting or appraisal work, into business getting and maintaining, but I also followed the blue audits.

Whereupon the witness was excused.

Whereupon Government Exhibit No. 100 was received in evidence over objection by respondent's counsel.

Whereupon Government Exhibit No. 115 was received in evidence over objection of respondent's counsel.

Whereupon Government Exhibit 115–A was received in evidence over objection of respondent's counsel.

Whereupon Government Exhibit No. 115–B was received in evidence.

Whereupon Respondent's Exhibit No. 200 was received in evidence.

Government Exhibit No. 100–A

The Government offers in evidence Government Exhibit No. 100–A, the same being a copy of the order of the Secretary of Agriculture of May 18, 1932, and the same was received in evidence over the objection of respondent's counsel.

DR. HOWARD D. DOZIER, a witness called by the Government, after being sworn, testified in substance as follows:

DIRECT EXAMINATION

I am the same Dr. Dozier who testified in the previous hearing and am still an economist employed in the Bureau of Animal

Industry, Department of Agriculture. I have remained in that employment continuously since my last testimony in this proceeding and have continued the same line of studies and investigations since the last hearing. My official duties in my profession as an economist have caused me to keep informed as to general economic changes in business in the United States at large.

1305 Government Exhibit No. 122

(Whereupon the Government asked to have marked for identification three sheets of photostat copied matter as Government Exhibit No. 122.)

Government Exhibit 22 which was introduced at the last hearing was the result of a statistical study showing by counties the receipts at Kansas City of the various species of livestock received from those counties. That is summarized also by States and is shown by counties and by States in Government Exhibit No. 22. The information contained in that exhibit relates to rail receipts of the various species at Kansas City for the calendar year 1927.

Government Exhibit No. 122 is a study by States of the livestock population for the years 1920 to 1932, inclusive, and the receipts from those States at Kansas City and four other markets. This exhibit shows information with respect to the states of Kansas, Texas, Oklahoma, Missouri, Nebraska, Colorado and New Mexico. These States furnished the major portion of the livestock received at Kansas City and may be thought of as including the Kansas City trade territory. The cattle and calf population, the hog population and the sheep population of each of these States as of January 1 each year is shown. The number of each species marketed from each State at each of these markets is given. There is also shown the total number of head marketed at these five markets and a percentage relationship of this total is set up for each of the markets and for the 7 states as a whole. The information contained in this exhibit relates to that livestock which arrived at these markets and passed through the stockyards. It does not relate to the so-called receipts from direct buying. The figures given in this exhibit do include such animals as passed through the respective stockyards direct to packers. Animals commonly known as "throughs" are included if they were counted into the stockyard receipts. I have summarized the percentages of the total receipts at all of these markets received by each for the years 1920 to 1931, inclusive. This summary relates to cattle and calves, considered as one species, hogs and sheep. The summary is as follows:

PURCHASE AT 5 MARKETS FROM SEVEN STATES [1]

	Cattle and calves in percent of number marketed											
	1920	1921	1922	1923	1924	1925	1926	1927	1928	1929	1930	1931
Kansas City	49.5	49.9	50.4	51.2	48.4	49.1	44.7	46.6	44.9	44.4	44.0	40.7
Chicago	3.0	4.3	3.7	3.9	5.0	4.5	5.2	4.8	5.7	5.7	4.9	6.7
National Stock Yards	14.5	14.8	13.9	14.3	14.3	14.5	16.5	18.6	15.5	15.8	16.3	16.8
Omaha	21.4	20.6	21.4	19.9	21.3	20.3	22.6	19.8	22.3	22.6	23.9	25.7
St. Joseph	11.6	10.4	10.6	10.7	11.0	11.6	11.0	10.2	11.6	11.5	10.9	10.1
All 5 markets	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0

PURCHASE AT 5 MARKETS FROM FIVE STATES [2]

	Hogs in percent of number marketed											
Kansas City	32.1	28.6	28.8	30.3	26.3	24.6	27.6	26.4	28.1	27.8	24.9	19.4
Chicago	.8	1.0	1.6	1.2	.9	.9	.7	1.8	1.1	1.1	.8	.8
National Stock Yards	18.9	22.3	23.0	24.0	24.0	24.1	25.8	32.5	24.8	26.3	25.6	23.1
Omaha	27.4	27.9	26.3	26.0	29.9	32.2	28.2	25.1	27.6	28.0	32.1	39.0
St. Joseph	20.8	20.2	20.3	18.5	18.9	18.2	17.7	14.2	18.4	16.8	16.6	17.7
All 5 markets	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0

PURCHASE AT 5 MARKETS FROM EIGHT STATES [3]

	Sheep in percent of number marketed											
Kansas City	47.9	42.3	43.6	38.7	41.5	40.0	43.2	43.0	42.6	42.7	42.8	45.8
Chicago	14.7	22.1	20.7	21.8	17.6	15.3	14.3	16.6	10.2	8.2	11.2	11.8
National Stock Yards	12.3	12.2	13.4	10.3	9.6	10.4	11.2	11.1	8.2	9.2	8.7	10.1
Omaha	7.6	7.1	6.7	11.1	9.2	11.2	9.6	8.1	10.8	11.0	12.6	9.6
St. Joseph	17.5	16.3	15.6	18.1	22.1	23.1	21.7	21.2	28.2	28.9	24.7	22.7
All 5 markets	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0

[1] Texas, Kansas, Oklahoma, Missouri, Nebraska, Colorado, New Mexico.
[2] Kansas, Oklahoma, Missouri, Nebraska, Arkansas.
[3] Kansas, Texas, Oklahoma, Missouri, Colorado, New Mexico, Arizona, Utah.

1307 Proposed Government Exhibit No. 122 was compiled under my direction. To the best of my knowledge and belief it is accurate. I might add that I planned it myself and the calculations were made for me. These figures were taken from certain Government publications, particularly "Crops and Markets," the Agricultural Yearbook, and some of them were taken from reports submitted to the Department. The Agricultural Yearbook is the yearbook of the Department of Agriculture. The reports are submitted monthly to the Bureau of Agricultural Economics by people who operate at the stockyards, I think by the Stockyard companies. I can state the purchases of cattle, hogs, and sheep by packers operating in the so-called Kansas City trade territory in the year 1931. I obtained this information from reports of packers to the Packers and Stockyards Division of the Bureau of Animal Industry in the Department of Agriculture. For the most part I have included packers who are located away from what are generally known as a central market. However, there are included in these figures the receipts at Kansas City by the so-called Mistletoe Yards, Armour, Cudahy, and Wilson. They do not include the purchases of Armour, Cudahy, and Wilson on the Kansas City public stockyards. These figures do not contain any purchases on the Kansas City public stockyards by any packer located at Kansas City. These packers from whose reports these figures were obtained operate their plants in that portion of the Kansas City trade territory designated as 50 to 100% area in Government Exhibit No. 22. The purpose in obtaining these figures was to show what proportion of the purchases of these packers they make on the stockyards and what portion they make in the country or away from the so-called central markets. There are 31 packers involved who purchase livestock in portions of those states named in Government Exhibit No. 122. These statistics are calculated on an annual basis. I do not have comparable figures for other years.

The Independent Packing Company in St. Louis is not one of the packers included. When I speak of the Kansas City trade territory I mean those counties which, according to my study for 1927, sent to Kansas City public stockyards from 50 to 100% of all livestock marketed by rail at the 10 important mar-
1308 kets. I included in the list of packers from whose activities these figures were taken every packer reporting to the Packers and Stockyards Division who has a plant located in that territory. I included in these figures all the purchases made by these packers regardless of whether they are made in that 50 to 100% territory or outside of that territory, except that I did

not include any purchases made on the Kansas City public stockyards by any packer whose plant is located at Kansas City. I have included all purchases of all plants located away from Kansas City regardless of where these purchases were made.

With respect to those packers located at Kansas City, I have included only those purchases made in the country. To complete the figures showing purchases at public stockyards and make them comparable with the figures showing purchases direct from the country, it would be necessary to include in the purchases at public stockyards the purchases by Kansas City packers at the Kansas City stockyards. In other words to make them comparable the purchases of Mistletoe, Armour, Cudahy, and Wilson on the Kansas City stockyards should be included.

It is my opinion that it would be fair and reasonable for the Secretary to allow as compensation for the use of the capital invested in the fixed assets as appraised and whatever portion of the memberships it may be decided to include with the capital, a return of 6 per cent and on such working capital as may be determined to be fair and reasonable, I think, 8 per cent or perhaps below would be reasonable. I am assuming that the ordinary risks incident to the business will be allowed for in a separate item and that the return to which I am testifying will be for the use of the money employed, including only such risks in there as is incident to the financial aspects of making loans.

I think the general economic conditions have had an influence on the decreased volume of livestock coming to Kansas City to be handled by these market agencies in the years 1931 and 1932. My personal opinion is that it will be a rather slow recovery. I should expect a somewhat slow recovery of receipts of livestock at the Kansas City market.

CROSS-EXAMINATION

I am connected with the Department of Agriculture in the same capacity that I was when I testified in the former hearing.

1309 I have had nothing to do with the issuing of the order of inquiry for the proceedings in this case or anything to do in connection with the hearing outside of what I have explained.

From the average price per hundredweight of hogs at Chicago for every year from 1880 to 1931, inclusive, the determination of an average is a matter of mathematical calculation. The normal is not, and I cannot answer the question as to what I would consider to be a normal price. There are any number of different kinds of averages. As I use the term "normal" it does not connote something that is mathematical.

If I, as a commission man, were to start out to borrow enough money to establish myself as a commission merchant on the Kansas City market, I don't think I could borrow the money. I think there are perhaps some people on the Kansas City market who, if they had everything wiped out today except their experience, might raise enough money to reenter business. I doubt if there are very many of that type. Such a loan would represent a character loan.

As to the function of these livestock exchange memberships in connection with the financial conduct of the business of the member agencies who are respondents, that represents a sort of a contribution into the treasury of an association which is held there as sort of assurance of good behavior on the part of the commission man and financial responsibility on his part. I do not think that I can say that the entire value of the memberships should be included among the assets. I have read most of the transcript of testimony in this record, and have not seen anything that would justify the conclusion that any of the respondents invested money in these memberships except in good faith.

I have heard of the law of decreasing costs. Within limits, I think that law applies to the commission business. I think it has a little different application there than it does in some other businesses. I would not necessarily expect to see unit costs decline with increased volume in the operation of a market agency. In this business I have seen it illustrated where a firm has a certain amount of business and with that business it has a certain unit cost and it decides to expand and goes out and expends so much to get additional business that it raises the average cost
1310 above what it was before they got the new business. That is unusual, however. It can occur that a firm on a certain volume is utilizing all of its capacity, personnel, and equipment, and it obtains a slight increase in volume, making necessary the employment of additional personnel and additional expense which is not so fully utilized, and, therefore, that increased volume sustains an increased unit cost. I think the commission business can be made generally to follow the ordinary economic principles of decreased cost with increased volume.

REDIRECT EXAMINATION

When I stated on cross-examination that I did not think that any market agency could borrow all of its capital requirements, having no capital of its own, I did not have the activities known as "clearing" in mind. I gave it as my opinion that there were some people on the market who could on their own personal credit and reputation borrow money to start in the commission

business. I do not know of any practical method whereby the amount of cash working capital necessary to the businesses of the respondent market agencies can be ascertained. Having in mind the variation for the need of working capital at different seasons of the year I would determine as nearly as I could the amount of borrowed liquid capital and apply the annual rate against it for the time the capital was used.

RECROSS-EXAMINATION

Supply does not guarantee the flow of livestock through any given market. I cannot account for the fact that Kansas sent some 27,000 more head of cattle and calves to Chicago in 1931 than in 1930, except that Chicago is generally looked upon during periods of declining prices as the market of last resort. I do not know why the receipts declined at Kansas City with respect to Kansas cattle between the two years. I doubt whether the altitude of the rates deflected many cattle from one market to another.

Whereupon the witness was excused.

1311 MR. W. G. LAND, a witness called by the Government, after being sworn, testified in substance as follows:

DIRECT EXAMINATION

I am engaged in the livestock commission business at the Kansas City stockyards under the name of the Walter G. Land Livestock Commission Company. We formed a partnership this year. Prior to that time it was an individual business and I owned the entire business. I clear the transactions of another livestock commission firm. I clear Link Faskin. My firm keeps his books, writes his letters, and clears his cattle, sheep, and hogs. We sell his hogs, but he has a very small number of them. We don't sell his sheep, but we have a sheep man that sells for a great many firms, and he sells for Mr. Faskin, the same as he does for me. He sells his own cattle. We do all his office work, keeping the books, writing his letters, and sending out his circulars. We pay for any livestock that he purchases for his customers. We make the remittance for livestock that Mr. Faskin sells, and we advance him money for those purposes. We get our money back when the livestock is paid for by the people to whom Mr. Faskin sells or when a customer for whom he buys pays for the livestock. We charge Mr. Faskin one-third of his commissions. I do not know that there is any regularly established price in the stockyards for clearing service. The amount charged would depend on how much business a man does and how good his credit it.

It would depend on the amount of business he had if I were making the deal. I do not think that the clearing charge would be smaller where the volume of business is large. We would have to employ additional help to handle it. We have to keep a separate set of books, and it would become more complicated the bigger amount of volume there was. This charge of one-third of the commission covers everything we do for Mr. Faskin. The circulars we issue for Mr. Faskin are just circulars relating to his business. We do not combine our business and his business in any way.

Whereupon the witness was temporarily excused.

MR. GLENN T. STEBBINS, a witness called by the Government, having been previously sworn, returned to the stand and testified in substance as follows:

1312 DIRECT EXAMINATION

The cost of the previous hearing over the period beginning with June 1, 1930, up to and including August 1, 1932, was $45,868.66.

CROSS-EXAMINATION

Subsequent to a meeting with representative members of the Kansas City Livestock Exchange or rather representatives of several of the firms respondent in this hearing with Mr. Bachmann and Mr. Burns, Mr. Gage and I called at Dr. Butin's office where Mr. Bachmann was working and some discussion was had relative to the application of Tariff No. 3 then in effect at the Kansas City market.

I delivered the so-called test sheets that had been gotten up by the various respondents showing application to their business to Mr. Burns. I recall with regard to our conversation with Mr. Bachmann that I made the remark that the word "drafts" as set out in the tariff meant the aggregate number of head in drafts weighing within the various weight classes and contained in one consignment. We were discussing the application of the tariff in respect to the reduction in the rate where there were more than 20 head in one consignment of cattle of the various weights referred to in the tariff. At the time Mr. Bachmann and Mr. Burns made a request for some of our test sheets I told them that the various firms had made a considerable number of tests and had delivered the work sheets on these tests to my office and that I would have to look some of them over. The matter slipped my mind for several days and when they made the request again I gathered up a bundle of the sheets which happened to be lying in the office and took them down to Mr. Burns. I turned them

over to him with the statement that those sheets did not refer to the test made on Tariff No. 3 but they did contain the basic information they desired. I have gone over these sheets in my office and I find that on the top of that file of sheets there were sheets from some five or six different firms where one of the tests was made on the sheep rates. The remainder of the file of sheets contained information as to cattle and calves and I found that those sheets constituted tests made by various firms which had instructions to make their tests on the basis of rates different from those adopted in Tariff No. 3. There were several firms which made their calculations upon the basis of the
1313 tariff in contradiction to the instructions that had been given out. These sheets could have been used in making a test of Tariff No. 3 because the basic information was there. I recall that Mr. Gage asked both Mr. Bachmann and Mr. Burns to analyze the account sales and draw off sufficient information to apply Tariff No. 3 accurately and arrive at the amount of reduction it would cost in gross revenue. They both said it was too big a job and that they could not do it with the facilities they had available and in the time they had available to make their audits. These sheets were used in testing different schedules similar in structure to that of Tariff No. 3 but the computations were made on the basis of various changes in the case of different firms in the various brackets of this tariff. The individual firms were applying in varying amounts 5 cents up and 5 cents down in one bracket or the other to determine what the result would be in order to arrive at an equitable reduction in the rates.

REDIRECT EXAMINATION

In analyzing their account sales on these particular work sheets to which we have referred, the firms were instructed by various individuals who were working on the rates to analyze the second week of the months of January, April, September, and October, 1931, respectively. These work sheets did include a take-off for those weeks showing the number of head in each weight classification and each consignment. In getting up these work sheets the individuals who were working on those rates laid out columnar forms. On the left-hand side of that form was a place to analyze rail shipments and on the right-hand side was a place to analyze drive-in shipments. Under each of those two classifications there was a column for the date, the number of head, the number of drafts over three, the number of account sales prorated, the number of extra checks and then under the classification of "calves" averaging under 400 pounds we had a column which showed, first, 20 head, then a column which showed the revenue from the first 20 head, and a column showing over

20 head, and a column showing the revenue which would have been derived from the number over 20. We had the same columns for weight classification of cattle averaging over 400 and under 800 pounds and for cattle averaging over 800 pounds.
1314 We had a column showing the total revenue which would have been derived from proposed Tariff No. 3 and a column showing the actual revenue under Tariff No. 2.

Government Exhibit No. 138

(Whereupon Government had marked for identification as Government Exhibit No. 138 three sheets entitled on one "Cattle and Calves," another "hogs" and on another "sheep".)

The analyzed forms contained in proposed Government Exhibit No. 138, without regard to the figures thereupon, constitute a printed form which is made up for tests subsequent to the time that Tariff No. 3 was put into effect. There were other forms printed previous to the time that Tariff No. 3 was filed which with little variation are similar to those forms. It is very possible that the data which I furnished Mr. Burns and Mr. Bachmann was contained on this proposed Government Exhibit No. 138. I do not recall definitely whether this is the case or whether the information I gave them was contained on forms which had been constructed previously to the time that Tariff No. 3 was filed. Both forms were constructed for the purpose of abstracting the necessary information from account sales which could be utilized in making the actual tests. During the time that the various firms were arriving at their final conclusions with regard to Tariff No. 3 considerable discussion was had in my office because it seemed to be the natural and central place for the various individuals to congregate and the information which the various firms furnished was concentrated in my office. I became more or less familar with Tariff No. 3. As far as making any official interpretations of Tariff No. 3 is concerned, I have neither the right nor the authority to do so because these tariffs are filed by each of the individual firms and in my official capacity as secretary of the Kansas City Livestock Exchange I have no concern in them at all.

(Whereupon the witness was excused.)

1315 MR. EUGENE BAUMAN, a witness called by the Government, after being sworn, testified in substance as follows:

DIRECT EXAMINATION

I am engaged in the business at the Kansas City Stockyards of livestock purchasing and brokerage. In other words, I am a livestock broker taking care of speculators and shippers. We buy cattle on orders for the independent packer and stock cattle

for the country trade. I am what is commonly called the order buyer and broker. I clear cattle for the traders who operate on the Kansas City stockyards.

They have me under a $45,000 bond and the traders who clear do not give any bonds to the Government.

RECROSS-EXAMINATION

I think that without the trader operating down there it would be a calamity. There would be no competition. I have had men buy trainloads of cattle when they were a drug on the market here. We have found places for them and shipped them all over creation, taking our chances on them. There were 19,000 cattle carried over last week and these boys went out Monday and bought up this cattle at prices that I would never have had the nerve to pay. They are still down there. It would be a calamity if the brokers and speculators were taken away from the stockyards because the average speculator is in competition with the packer and invariably we pay more money for the livestock than the packer pays for them. If they could mark their tickets like they do the hog tickets it would be a fine mess. When the market starts down the packer is generally the first to go out. He lays right down and livestock is perishable.

Whereupon the witness was excused.

Government Exhibit 127–A

Government offered in evidence Government Exhibit 127–A consisting of a pamphlet for each of the States of Arizona,
1316 Arkansas, Colorado, Kansas, Missouri, Nebraska, Oklahoma, Texas and Utah, containing data in County Table 4 in Lines 35 to 72 relative to cattle and swine on farms. These pamphlets were obtained from the Department of Commerce and are census figures bringing down to date the figures introduced at the previous hearing in Government Exhibit No. 27.

Government Exhibit 127–B

(Whereupon Government offered in evidence Exhibit 127–B.) This exhibit was offered to show the sheep population as contained in County Table 9, Lines 1 to 35, both inclusive, for the same States enumerated in connection with Government Exhibit 127–A. This exhibit is a continuation of Government Exhibit 27 offered in evidence in the former hearing.

Government Exhibit 128

Government offered in evidence Government Exhibit 128, a compilation containing the publication of the Department of

Agriculture known as Crops and Markets. This is a monthly publication and the issues included in the proposed exhibit are for the months of January to August 1932, both inclusive.

We offer that portion of the publication containing livestock statistics under the heading "Livestock, Meats, and Wool."

This exhibit is offered as a continuation of Government Exhibit 28 offered at the previous hearing.

LAURENCE G. TRICKETT, a witness called by the Government, having been previously sworn, returned to the stand and testified in substance as follows:

REDIRECT EXAMINATION

Government Exhibits Nos. 113–E, F, and G

I have checked the exhibits marked for identification as Government Exhibits 113–E, 113–F, and 113–G and made the corrections in lead pencil in these exhibits.

(Whereupon the exhibits were received in evidence.)

1317 RECROSS-EXAMINATION

Respondent's Exhibit No. 205

Respondent's Exhibit No. 205 shows the total receipts of cattle and calves and sheep received on the Kansas City stockyards together with the number of head sold, the per cent of which the sale represents to total receipts, the through shipments and the percent the through represents to the total receipts for cattle, calves, and sheep. The column headed "through" comprises all through cattle, calves, and sheep which came to Kansas City to try the market and was not sold but shipped on, and also livestock stopped at Kansas City for feed, water, and rest without trying the market.

(Whereupon Respondents's Exhibit No. 205 was received in evidence.)

(Whereupon the witness was excused.)

Evidence Offered by Respondents

MR. ALAN WILSON, a witness called by Respondents, after being duly sworn, testified in substance as follows:

DIRECT EXAMINATION

I live in Chicago and am one of the partners of the firm of John Clay and Company, which maintains a market agency on the Kansas City market. Mr. Clay, Mr. Connor, and Mr.

Smith are the other partners. As to what the partners themselves do in connection with the management, supervision, and operation of our agency here at Kansas City, it covers a multitude of sins. I would say, making a broad general statement, that the members of the firm of John Clay and Company act in the same capacity as the administrative officers of any concern who do a large business. For example, we are more or less familiar with Tom Wilson, who is at the head of Wilson and Company.

I presume that our supervision and control over these various offices is a good deal the same as any management and control of the business of any similar concern. All of the part-
1318 ners devote their personal time and attention to the business and necessarily to each particular commission house in the chain. I came in here yesterday and spent all day with our people at Kansas City. I got up this morning and went to St. Joe and spent the day there today. I am going to catch the train for Fort Worth this afternoon and spend tomorrow and the next day there, that is in connection with the supervision and management of these commission houses entirely. While I am in Chicago I am personally active every day in connection with keeping in contact with the business and exercising an executive control over them.

Mr. Clay and Mr. Connor devote their personal time and attention to the business as I do. That situation has existed right along throughout each year since we have been partners in the firm. The Chicago office receives statements of business every week from the local houses such as the one at Kansas City. There is never a day goes by but there is an interchange of correspondence between the Kansas City office and our office. There are general services, financial, providing legal advice, and matters of that kind that are attended to at Chicago. The expenses of those services is borne in Chicago. Quite recently there has been a charge made for that at Kansas City. I would not say that there was no charge made for administrative salary in 1931. There was a portion of this expense charged to the Kansas City office. That is, part of the general office expense.

There are some expenses of that kind, which we can handle more economically at Chicago than if we had at the different branches a set of executive officers and a board of directors. There have been losses resulting from the transaction of the loan business in the last few years. As pertains to 1930 and 1931, any advantages that have been gained in volume have been substantially offset by the losses in loan business. It is rather difficult to come in here and appraise our own values. Lots of times, trying to get a job, we try to value the other fellow if

we cannot value ourselves. I don't know how you can base the value of the members of any firm to the firm itself. I certainly hope that the activity of the partners and the name of John Clay and Company has a decided value. Naturally the experience of the partners has added to their value to the business. They have spent a lifetime in it. I think I have been in the business thirty years or thereabouts.

1319 CROSS-EXAMINATION

Mr. Smith manages the Denver house. The other members travel more than I do, I imagine, with the exception of Mr. Smith. I think it was in July when I was in Kansas City before. I come down here about four or five times a year. The other members do not come to Kansas City as much as I do. In a degree we divide the territory.

The character of my business on these commissions and the local houses is familiarizing myself with the organization and what is going on. There is no particular branch of the office that I am more interested in than any other. I do not personally supervise the activities of the firm in connection with the buying and selling of livestock. I do not personally engage in that buying and selling at any one market. My firm has a local manager here at Kansas City. I am not primarily interested in the livestock loan work of John Clay and Company but do handle some of their financial affairs.

The local house at Kansas City accounts to use once a month. We do not maintain any accounting force there to handle the daily affairs of this firm at Kansas City except we have an account on our books, a running account, a number of entries in every day, and money they draw. We are a sort of financial and administrative center for these local houses. It would be ridiculous for the folks at the Kansas City office to consult with us in Chicago each day as to the prices of livestock; that is left to our local folks here. When our folks at Kansas City go out on the market in the morning to sell livestock, we leave it to them entirely to arrive at their judgment and conclusions as to the price they ask and when they shall sell.

In 1931 we made some charge against the Kansas City house for general organization expense. In 1931 we also charged the local house $10,000.00 for administrative salary. We arrived at that figure by assuming that the members of the firm had a potential business and then divided that value up among the various offices. It was allocated partially on volume and partially on the matter of supervision and attention that a particular office would have to have or had.

We do not determine the value of a local commission office by its value as a loan getting center. To a large extent we
1320 rely on our local branches to get loan business for us. John Clay and Company has been one of the large livestock loan concerns of this country and it still is. John Clay himself visits these local houses a great deal, but recent years he has not come to Kansas City very often. The $10,000 charged against the Kansas City office for administrative salaries is not an estimate of the profits which this house should yield to us either from the commission business or the loan business. I don't think it was anticipated that on the basis of past performance the business would pay $10,000 but naturally it was hoped. Naturally, we have to have some idea as to the profitableness of the Kansas City house to John Clay and Company. I don't believe we ever considered the value of the Kansas City house from the loaning standpoint. The local house here at Kansas City does handle a great many of the loans for John Clay and Company. If a man is shipping to the Kansas City market, when he wants to borrow some money he would apply to Kansas City for it. They make very few loans without referring them to us in Chicago. After we have paid our expenses of the Kansas City house the profit, if any, is transferred on the books of the Rookery office which is our Chicago house. Regardless of whether it was paid to us in the form of profits or was paid to us as a direct payment, it all goes to the same place. If this $10,000 item is placed on the books here and whether paid to us as a direct payment or whether entered at the end of the year in the profits of the business here at Kansas City it is all the same and I would say that under that construction it would be a book entry. We are in the same position as any manager who depends upon the profits of the business for his income.

REDIRECT EXAMINATION

We think this $10,000 a year is intended simply to represent an extremely reasonable appraisement of the time and effort the partners devote to the business. In connection with the general level of livestock prices, we do consult with the management here at Kansas City and give the local office the benefit of our advice. It would be out of the question for us to attempt to influence particular individual transactions from day to day. We do feel that we have probably a little more general information, keeping in constant touch with our ten offices, than any individ-
1321 ual office possibly could have. Frequently we try to communicate this information to these various offices for the

good of our customers. We try to keep in just as close touch with the situation as we possibly can. We handle the finances of the local concern here and furnish it with the working capital that it needs to operate on. Frequently they touch us for fifty, sixty, or seventy-five thousand dollars at a wallop. Mr. Vance told me here on yesterday that they were drawing on us for $50,000. Twelve thousand five hundred dollars working capital would be entirely inadequate at Kansas City. We would have to have a very good line of credit with the local banks to be able to conduct the business on $12,000 capital. That would very largely involve paying some interest charge on that credit. It is the endeavor of the administrative officers of John Clay and Company to keep all expenditures that are made at the local office at the lowest possible level that we can keep them and still maintain the proper kind of service that our customers require. That is true of business getting and maintaining expenses. We have not considered business getting and maintaining expenses of this office unreasonable or unnecessarily high in the past.

RECROSS-EXAMINATION

John Clay and Company has commission houses on ten markets. As a firm we do not control a bank or a ranch. We do not enter into any feeding ventures and we do not enter into any speculative ventures. Some of the individual members of the firm have ranching and banking connections which require some of our time and attention. Over a period of time the livestock market business of John Clay and Company will vary from a million and a half to thirteen or fourteen million dollars. Naturally, it is higher some years than others. The $50,000 which Mr. Vance drew on us for was in connection with the commission business and not the loan business. It was in connection with the buying of cattle. When he asks us for that much money we do not question it. To some extent we disseminate the information through the weekly paper which is issued by John Clay and Company. We make a charge to each house to maintain and support that paper. I have no way of evaluating the value of the management to the firm.

1322 REDIRECT EXAMINATION

I would say that there is a decided economy to the local organizations resulting from the fact that we publish the paper in Chicago. The loan business of John Clay and Company is of decided value to the commission business in retaining volume on

the open market. John Clay and Company furnishes the capital which constitutes the equity in that loan business.

RECROSS-EXAMINATION

Mr. Reed has been our local manager here at Kansas City since 1924. I regard him as a highly capable man. I regard him as competent to manage and look after the local affairs of our house here.

(Whereupon the witness, Mr. Wilson, was excused.)

MR. FRANK WITHERSPOON, a witness called by the Respondents, after being sworn, testified in substance as follows:

DIRECT EXAMINATION

I am connected with the Witherspoon Live Stock Commission Company, one of the respondents. I testified at the former hearing. At that time I prepared and identified Respondents' Exhibit 29, being an exemplification of typical methods and practices employed in the operation of the livestock commission agencies.

I think there have been a few extra requirements made on commission men, but the methods and practices themselv's have not changed materially since that hearing. In the handling of our business I notice that the demands for appraisal work and country services have increased some. A short time ago Mr. Ross of Fort Worth, Texas, asked me to come to Fort Worth and when I arrived there he told me that he wanted Mr. Sanders, our fat steer salesman, and myself to handle the marketing of 1,700 cattle and Mr. Ross asked us to go to the Flint Hills country and look at these cattle several times. After we had spent considerable money servicing that particular string of cattle he decided to put them on a feeding contract in Illinois, so we
1323 were out that expense with no return. Just this last week I was called to go to Nebraska to place some cattle on a feeding contract for the E. B. Johnson and Sons estate and those cattle were placed in what I would call the Omaha territory. I feel that there will be practically no return. I could go on and give a good many concrete cases in all these lines that in my opinion were not so general in their requirements when the other case was heard. I also might mention that we are having a good many extra regulations and requirements around the market, regarding tuberculosis in cattle. About a year ago there was a meeting in Chicago where representatives from a great many states met and it was decided after 1934 cattle would have to be either tested for tuberculosis on this market or come from what

was known as a "clean" area. Since that regulation started we have had to spend a good deal of time trying to find outlets for the purchases of cattle coming from the southwest that were in what they call an "accredited area." I believe I could truthfully say that we are getting more of this kind of regulation round about us and there is a tendency on the part of owners of cattle to ship from the ranges in the western country direct to the feedlots and pass up the center markets, because at such places as Morris feed yards they are not encountered with a lot of these extra regulations and the doubling up of freight rates. I deemed it necessary to render the services to Mr. Ross and Mr. Johnson because those demands are made upon us by our customers and if we do not render that class of service probably firms of Omaha or other places will render them to these particular parties. If we render these services and are out that money it increases our expenses and that means an increased per unit cost in the handling of the business. A few years back we did not have the demand and I do not believe other firms had the demand to render these particular services as well as many others. A general refusal to render that service upon request of our various customers would cause our agency to lose the business. That would run the unit cost up as the volume went down. It would have an effect with respect to the total volume of business at Kansas City if other firms followed the same policy at the Kansas City market, because these parties would seek other markets. The total volume at Kansas City would be less and the unit cost would be higher. I have observed the decline in the volume of cattle
1324 marketed at Kansas City. That has occurred despite the efforts that we have made to retain or increase volume. This rate on livestock in and out of the market works to our disadvantage as against a rate direct from the ranges to the feedlots. It affects our volume and increases our per unit cost because of our shortage of volume.

The way we regulate our own salaries or profits is to draw out a salary for each owner during the year and then at the end of the year we may declare a dividend if we think it best to do so. This salary is really in the nature of a drawing account.

During 1931 I used all possible effort to economize in every feature of our operations and with respect to all classes of expenditure. Considering the conditions that then confronted us, I consider the expenditures made, as reflected on the audit, reasonable in amount.

Anything that is sold to the packers where we have high-powered competition, so far as talent is concerned, carries with it a tremendous responsibility.

I am acquainted with John Bachmann, who was in charge of the audits for the Government. I remember that just before the original case was heard Mr. Bachmann came to our office and there was some friendly discussions pro and con "off the record." I do not remember ever discussing in a serious way the distribution of costs. I do not want it to appear in this record that I have gone on record regarding any positive plan of distribution of costs in any conversations that I have ever had with Mr. Bachmann. I do not know how Mr. Bachmann allocated his costs as between species, carried on down to modes of arrival, in respect to our firm. From a practical standpoint his unit costs seemed out of balance to me.

I have practically spent my life in the business. My father's experience would cover over 40 years, either in the commission business or the handling of cattle. I came to the yards in 1898, during the summertime, and after I got out of school. I have served at one market or another continuously since 1902. Before 1898 I had worked with my father either in the feedlot or on the range. My experience dates back some 30 years as to the market agency business.

In the original establishment of unit charges I recall that
1325 the value of the cattle was considered in the discussion, so far as rates were concerned, but I do not remember that any exact percentage was ever mentioned. If you would ask some of the old-timers down there about it you would get them all to agree that there was about two per cent in mind when they discuss- this. The purpose was to keep these charges down a little under other lines of business like real estate, but I don't recall whether my father in discussing it with me ever said two per cent. That is a little back of my time.

Respondents' Exhibits Nos. 201 and 202

Respondents' Exhibit No. 201 is an account of purchase for the account of W. H. McBride of Boyle, Kansas. Mr. McBride came into our office and told us that he wanted to buy a car of steers. Our order buyer bought these cattle for him and after the purchase was made he wanted our company to wait on the collection until he could ship some of his fat steers. We were forced into the position of taking care of Mr. McBride in the handling of the payment for his cattle that he purchased. We accepted his draft as of October 18, but we did not present that draft for payment until October 25, the day that he shipped his fat cattle. The interest on this amount for that time was $1.78.

Mr. McBride has shipped to us for a good many years and we felt that under the circumstances we should absorb this interest in our general expenses. Exhibit 202 will show the truthfulness of my statement that in some cases shippers order a 40-foot car and the agent furnishes two 36-foot cars. When Mr. McBride shipped his fat steers he availed himself of this opportunity and ordered a 40-foot car, but the railroad furnished him two 36's. The railroad enjoyed a revenue on that extra weight, whereas if we had had our rates on a per-car basis we would have to have charged for just one car, and according to the order of the Secretary of Agriculture in this particular instance we could not charge but $16.50. We would have been compelled to put in free of charge a lot of additional services that bring about a discrimination in my mind between rates. Under Tariff No. 3, Mr. McBride paid on this consignment of October 25, $26.60, or $10 more in the form of commission than he would have paid under the Secretary's order. The railroad was able to protect itself in the extra poundage as it has no maximum. The
1326 maximum commission charge provided for in the Secretary's order if imposed on it in this particular instance would bring about an inequality or discrimination in charges. The total weight of this consignment was 36,340 pounds. They came in in two cars, although they were billed as one. These cattle sold for $2,347.55. Under the Secretary's order the commission would have been seven-tenths of one per cent of the gross proceeds, and under Tariff No. 3 it was 1.13 per cent of the gross proceeds. These steers were not of choice or top quality or grade. The best grades of cattle at that time on the market were selling somewhere from 7½ to 8 cents, and these sold for $6.50 per hundredweight, with one out at $5 per hundredweight. This particular consignment included steers weighing over 800 pounds, and the commission charges were under paragraph 3 of Section A covering the sale of cattle by rail.

I think that it is important to have a uniform charge at a market, but I can not see how anyone could consider it equitable to use a particular plan of rates and apply it to all markets alike, because, for example, this market here is a rail market. If we take the rate that produces a good revenue at a drive-in market and take the same rate and apply it down here, it is very apt to throw things out of kilter. If this were primarily a truck market, we would be devoting the major part of our efforts and activities to securing and handling drive-in business. The rail business would then be secondary.

(Whereupon, Respondents' Exhibits 201 and 202 were received in evidence.)

CROSS-EXAMINATION

There is a demand for appraisal service at present on account of the uncertainty of conditions and on account of the growing competition situation from other markets. I believe that those two are the major reasons for this added requirement or demand.

At the time of the other hearing, I believe that there was not that urgency of making extra expensive trips like there is now. They expect us to come out and look at their cattle and expect us to spend a half a day or a day to sit down and visit with them. If you don't do that other people at the other markets will,
1327 and, of course, there are some people at our own market who will avail themselves of an opportunity to cut in on us. If these cattle go to another market, it reduces our volume. If we don't go out and see them, we might find an added competition in the movement from the ranges direct to the feedlots, and that reduces our volume at the terminal markets. I find that there are little centers popping up everywhere where these cattle are being sold which cuts down our volume. The volume is being affected even with all this extra effort. If we don't spend that money we could not maintain our volume. We have not added to our personnel, because we didn't figure that it was business judgment to add any extra expense when we have diminishing volume. On account of the flow of cattle here at Kansas City it has been possible for us to go to the country the latter part of the week and perform those services. We have been able to do that the week-ends now. If we had received the volume that we used to receive, we could have reduced our unit cost through that volume and at that time there was not this demand. Back in the old days, the Kansas City market received very light cattle over a period of about three days, and we have narrowed ourselves down to a smaller spread all the time. The decrease in the volume of business acts as a spur to us to attract business, but we have been so busy servicing our regular trade that we have not had much opportunity to do it. If we did not service our regular trade that busines might go elsewhere. I think that over a period of five years every agency has tried to get all the business that it could get, when they had time to try to get it. To a degree there are agencies at the Kansas City market and also at other markets which are more active right now in getting out in our territory and attempting to get the business of our customers. We must not overlook the competitive situation as far as it relates to other markets. It is not wholly chargeable to the local situation. To a slight degree it is due to the local situation. To a slight degree that is due to the slackening in the volume at this market. There was practically no demand for this kind

of service other than helping place cattle on Kansas grass around ten years ago, but there has been since that time an increasing demand in the servicing of that class. There has always been a
demand to go out and look at cattle in the country. Those
1328 demands have been increasing. We have to turn them down some in view of the fact that we could not get to them. I don't think any firm could possibly comply with all such demands. They have to use business judgment. To a degree, as some firms increase their activity along that line it would be necessary for other firms to do the same.

When we filed Tariff No. 3 we made another slight reduction along the line that I last explained. I think our books would reflect that our expense in going to the country is as great or greater than it was last year and that our postage is greater than it was last year. I think our postage would reflect a greater increase than the increase in postage rates because we have so much mail this year which meant nothing to us in the way of revenue. We have had a little less expense on account of meals of our employees at night. I believe you will find that we are having a greater telephone and telegraph expense, first because of the inquiries from the country, and second, because of this new added tax. I believe we have our salaries down so low now that the men who work for us could stand practically no further reduction and since my father's death I cannot see where we could cut out any of the costs for administration and things like that.

The Kansas City market received its peak receipts for the year 1931 on October 12 of 30,002 cattle. The peak load for the market in 1929 was 33,745 for one day and for 1930 it was 35,157. In the case of the Witherspoon Commission Company the peak load in 1931 was 85 cars on October 12 and 62 cars in the same year on October 19 and 52 cars on October 26. This peak load we have in the fall of the year makes it imperative for us to keep an organization together to handle it. I mean what we would call a skeleton organization, the salesmen and the talented part of our force. The buyers are more critical than they used to be even though to a certain extent the shippers attempt to grade their stockers and feeders before they ship them. We have to sort considerably.

As to budgeting our expenses we will meet around the table and say that we are going to keep our traveling expenses within a certain amount each month. In theory that is fine but in practice it is not very good because one month we will receive more
demands to go to the country than we do other months.
1329 Where we get hit hard is telephone calls from New Mexico, Texas, or other points. When a man calls us up and

advises us about a shipment we do not pay it but if he calls us up and asks us to come down, it depends upon the nature of the conversation over the telephone, but usually we have to pay most of those calls. We try to avoid as much of it as we can. I think that our rules right now in respect to that are just about as stringent as they could be, considering our present conditions. If we refuse to pay these telephone calls and these telegrams, while the country is in the condition it is in, I believe it would be very detrimental to this market. The only place where there might be some extravagance would be where they would think some prospect might buy some cattle. Under the rules they can pay all those telephone calls and telegrams. The anxiety to build up a price level at the market naturally prompts that sort of thing.

The fact that the highest priced salesman sells fat cattle does not mean that the other classes of livestock are sold by salesmen who are less efficient. I think an employee salesman of fat cattle can be just as efficient as an owner salesman of fat cattle and can sell them as well. It is very important that every animal should be sold well, and I think that whether a man draws $100.00 or $200.00 a month, he tries to sell the livestock well.

If we just handled an exclusive rail business and no drive-in business, naturally our costs would run higher on our rail business than in the case where we receive what we call drive-ins and handle them with the same force that we handle our rail business. There is just naturally that help in keeping down our unit costs. In our case we have a fellow to bring the truck cattle over from the chutes and that is extra. There is no other extra expense to our firm from the time they are delivered to our pens until they go over the scales.

I do not think you can put all the emphasis on value. I think value is a factor and I think the operating costs of the yards is a factor. You have got to consider then what would be an equitable adjustment and you have got to make what you think would be a fair adjustment.

We have not in our files one objection to the tariff. I think that in any tariff cases can be recited of such variations. I do not believe it is humanly possible for the best expert in the
1330 United States to figure out a tariff that would be just exactly fair to everybody under all circumstances.

My firm has a branch house at Wichita and one at Fort Worth. They are under the supervision of our firm. We have had the Wichita house since 1915 and the Fort Worth house since sometime this summer. I make trips to those offices at different times in the year, but we have managers at both houses, and we have a profit-sharing contract with those managers, which enables me to

direct most of the responsibility to them. However, I don't completely overlook those other two houses. Sometimes those houses forward livestock to our firm here. We are practically out of the loan business. There are times when we are forced into it.

For example, if we have 40 head of cattle in a consignment, with this sort of a rate, the per head charge would naturally be a little greater than if that same consignment were 100 head, because the 100 head divides up that extra cost in the beginning, and it more or less tapers out into an average lower per head charge. It is my view that there are certain fixed expenses that attach to any consignment regardless of whether it is large or small.

REDIRECT EXAMINATION

It is my opinion that the legend of business getting and maintaining expense, shown on page 24 of Government Exhibit 115, with respect to our firm, may be confusing to anyone who is not familiar with the practical operations of a market agency. It gives the impression that the expenses under that heading were incurred because of the active competition between agencies in trying to get business from each other. It shows that the advertising expense of the Witherspoon Livestock Commission Company for 1931 was $2,970.95. The blue audit shows that advertising is divided into the following classifications and amounts: newspaper ads, $361.25; circular letters, $989.65; postage $1,151.60; specialties, $299.70; and other expenses, $168.75. I believe that possibly the newspaper advertising should be considered as business getting and maintaining. In every one of our newspaper ads for our company we run a heading in bold type, "Eat More Meat." The money expended for specialties should be included under the legend of business getting and main-
1331 taining. I believe that some other legend should be used for circular-letter expense and postage expense to give to the Secretary of Agriculture clearly the right impression. I believe that the major part of this expense referred to should be under the legend of "auxiliary selling service." I think that a major part of this expense is used in order to serve the patrons who have already been shipping to us. Since that expense is incurred in servicing the patrons who have been shipping to us, the part of the money used in sending them market letters and part of the money is used in paying postage to send those market letters is an expense that rightfully belongs to the selling side of our business. In our particular case, probably 30 or 40 per cent of this money should be allocated to business getting and maintaining, and the remainder should be allocated to auxiliary selling service. We revise our list the first of each year,

taking as a basis for our circular letters the names of our patrons who have consistently patronized us over a period of time, plus prospects. I do not want to disregard totally the necessity of business getting and maintaining. There is a competitive situation between markets and between companies that form the viewpoint of a layman I think should be considered. In fact, I do not see any part of our business where we could cut expenses more and still maintain efficiency and good service.

I would classify business getting and maintaining in this schedule $1,686.20 instead of $2,970.95. Of this amount, only $361.25 would represent newspaper advertising and $299.70 would represent the purchase of specialties.

The traveling expense, according to the blue audit, is divided as follows: soliciting, $847.88; appraisal, $3,767.61; and conventions and meetings, $550. I believe that soliciting and the major part of the convention and meeting expenses should be allocated to business getting and maintaining expense, but the appraisal expense of $3,767.61 should be allocated to auxiliary selling service. Three thousand seven hundred sixty-seven dollars and sixty-one cents ($3,767.61) of this total of $5,165.49, appearing in the column under the heading of "travel," should appear under the heading of "auxiliary selling service," with the exceptions mentioned in my statements in the record. The exceptions which I noted should be segregated to drive-ins and some of the hog business.

1332 Under the heading of "general automobile expense," I think that the soliciting expense of $99.67 should go to business-getting-and-maintaining, and the appraisal expense of $398.68 should go to auxiliary selling service. All the money that we spent on our customers who have been shipping to us for a long length of time in the way of local and miscellaneous entertaining should be classified as auxiliary selling service. I think that the money spent covered by the heading of membership dues and exchange assessments is spent in an effort to maintain a higher degree of general market efficiency and a higher degree of integrity on our market. It is an expense necessary in maintaining the position of all agencies, and I believe it has just as much importance as the maintenance of a location itself for an agency. I feel that it has as much importance as the rent itself. I believe that I failed to mention that there is a lot of development work here at Kansas City. I would call it "market maintenance and development." None of this money is expended to solicit business for my firm. It is spent for the general good of the market, which means the general good of the patrons of the market. I think that this expenditure is just as necessary as the salaries for salesmen and so forth. When I referred to the

blue audit I was very much confused when I saw the legend "Exchange Soliciting," because that is not a fact.

The total of these expenses on page 24 was $9,995.11. I would have included only $3,115.55 of that total under this particular classification and cost segregation. I would have classified $5,613.94 to auxiliary selling service and $1,165.62 to general expense or market maintenance and development.

Comparing the average receipts and the peak receipts of Kansas City and Chicago, it is very easy to be seen that there is more of an average constant flow of cattle and calves through the Chicago market, while at Kansas City we have these extreme lows and extreme highs.

Respondents' Exhibit 203

I now wish to refer to proposed exhibit 203, which is a graph that shows the difficulty of the Witherspoon Livestock Commission Company in handling its unit costs. During the week
1333 of October 5, 1931, the Witherspoon Livestock Commission Company received on Monday of that week by rail 2,312 cattle and calves; Tuesday, 1,005 cattle and calves; Wednesday, 425 cattle and calves; Thursday, 88 cattle and calves; and no rail shipments on Friday. On Monday of the same week the firm handled 35 head of drive-in cattle; Tuesday, 3 head; Wednesday, 19 head; Thursday, 33 head; and Friday, 1 head. It can be very easily seen that in this particular week there was an extremely high peak reached, and it naturally took an organization to handle as near as possible that amount of business. In order to handle a peak of this kind, salesmen and other employees have to be employed over the period of the year. This exhibit, on the other hand, reflects a more constant flow of drive-in cattle throughout this particular week. I have referred to the week of October 5, but during the week of October 12, the same year, the situation was more difficult on account of the fact that the firm received on Monday of that week 2,856 cattle and calves. The next day there was a very abrupt drop in business to 957 head of cattle and calves; on Wednesday, 250 cattle and calves; on Thursday, 166 cattle and calves; and Friday, 68 cattle and calves. In that same week this company did not have any drive-ins on Monday and Tuesday and only eight on Wednesday, 25 on Thursday, and five on Friday. This exhibit was prepared under my direction and I have no record of the number of cattle and the number of calves represented separately in these cars.

Considering the fact that the salesmen selling cattle for my firm spend their time in rendering this auxiliary selling service during the days and weeks and particularly during the latter

days of the week, and particularly during the periods of the year of relatively low receipts, I feel that it should not be considered stand-by or idle time. I feel that if at Kansas City we did not have these highs and lows or peaks and valleys that we could through that situation to an extent, reduce our unit costs.

I think that the amount of $4,073.50, under the legend of business-getting-and-maintaining, under the salaries account on page 20, exhibit 115, is not, from a practical angle, properly allocated. The Witherspoon Livestock Commission Company has to employ all its employees as listed in the questionnaire of the Government in the handling of livestock on the
1334 market. These men would have to be employed in the operation of our business if they did not go to the country at any time. I feel that this amount of $4,073.50 should be placed against the general operations of the business within the confines of the Kansas City Stockyards. I feel that when we send men to the country for auxiliary selling service, or for business-getting-and-maintaining that the traveling expenses in doing this particular work are the only items of expense that should be split up between business-getting-and-maintain'g and auxiliary selling service.

When I say "auxiliary selling service," I mean the service that the Witherspoon Commission Company performs in servicing its trade. By "business-getting-and-maintaining," I mean the business that the company makes an effort to get above its regular, established trade. I contend, as a layman, that the Government questionnaire is misleading from a practical standpoint, because they have gone so far even to omit the word "maintaining" and the so-called appraisal time and soliciting expense is thrown together under the heading of "country trips," so far as this time relates to salaries. I think that the percentage of time under the entire heading of "business-getting" should be eliminated and thrown against the general expense of the business. I am not trying to pose as an expert on cost finding.

During the week of October 5, 1931, there were 403 head of calves included in Exhibit 203 and during the week of October 12, 1931, there were 837 calves included in the number. Based on my practical knowledge of the operation of business, the allocation which I have given would distribute $3,215.55 to business getting and maintaining, and the total eliminations from that category would amount to $10,853.06. The amount which I would include in business getting and maintaining expense would be approximately 6½% per cent of the gross income instead of 28.5 per cent shown on page 31 of Government Exhibit 115. From a practical business standpoint that would be a fair allocation.

Practically all of the amounts spent by my firm for charities went to the local charity chest. The contribution was made as a result of a general appeal in united action under the direction of the Chamber of Commerce by practically all of the charitable organizations of Kansas City for funds to maintain them on an annual basis.

1335 The interest charge in connection with the firm amounting to $71.45 has no connection with the operation of the commission business. The elimination of $100.62 for taxes under the heading of "Miscellaneous" represents taxes on the farm and is a proper elimination as far as the commission business is concerned. On the income side of the profit and loss statement of Exhibit 114–73 is the sum of $202.00 which is rent on the same farm. The profit and loss statement appearing on Exhibit 114–73 showed a net loss of $4,551.22 and yet on May 23, 1932, we filed a schedule on behalf of our firm, which has had the effect of reducing further our gross income. In my judgment it would not be possible to make further salary reductions in our organization without impairing the efficiency of the service which we render because I feel that the present salary scale is in line with present living costs. If we further reduced those salaries it might reflect on the efficiency of our organization. If salaries would be placed on an extremely low level, considerably below living costs, there is a chance to possibly effect the integrity of the employee. I feel that everyone in our employment is absolutely honest, and still I can see that business hazard from the point of management in the administration of the business. There are opportunities in the business in respect to which a lack of integrity would prejudice those whom you serve. A yardman could stand in with a man in the stockyards company over feeding cattle and make money that way in a crooked manner. A salesman could sell cattle and stand in with the trader and be crooked in the sale of the cattle. An office man could abscond. I feel that the rate of return on commissions should be sufficiently high to insure the very best service, efficiency, and integrity. I know that the Kansas City Exchange has sought for years to see that a high standard of integrity is maintained, but the chances for the condition described are greater when the salary scales are too low.

RECROSS-EXAMINATION

I can readily see that if we had an increased volume that would have a certain bearing on what we would be willing to pay. If our volume increases we could pay more, but I am

assuming that we are facing the possibilities of a decreased volume. I think it would be generally admitted that if we had an increased volume, under existing conditions, we
1336 could operate at a lower unit cost than we are now operating. If our volume would double, for example, our revenue would be greater and we could afford to pay more, and we could operate on a lower unit cost.

We cannot expect the volume from our trade area in the future that we have gotten in the past on account of those changing conditions in handling. Another reason, in my opinion, that we will not get as many cattle to Kansas City, out of that broad area, is because there are small packing houses springing up all over the country. There are auction rings being established and by the way at those auction places the service charge is 4 per cent of the value in a good many places. Those factors just mentioned will continue to hold down receipts at Kansas City until we can in the future toward a diminishing volume. Geography does not interest us so much as volume, and on account of the way the livestock is being handled now within the aera, we have faced a diminishing volume.

Price has something to do with determining the direction in which livestock will flow to market from any territory. Another factor in that connection is the railroad freight rate situation.

I would allocate 40 per cent of the expenses for circular letters and postage to business getting and maintenance and 60 per cent to auxiliary selling service. I allocated the traveling expenses, which according to the blue audits for appraisals, is $3,7.7.61 to auxiliary services. I also allocated to that auto operation and auto depreciation expenses. I also allocated to the same head miscellaneous entertainment. I do not like the word "soliciting" in connection with the heading called "Exchange Soliciting." That is not a true statement of facts. I call that "market maintenance and development." The amount was $1,165.62, that makes a total of $6,779.56. I feel that the Department of Agriculture has the impression that this caption or legend of business getting and maintenance means nothing more nor less than the scrapping between agencies here to get each other's business. I have tried to show the difference between business getting effort and that part of our business where we were not servicing the prospects of our business, but were servicing the patrons who had been shipping to us in the past and maintaining what I call an auxiliary selling service. That is of just as much impor-
1337 tance to the shipper as the selling of livestock on the market. I made the allocation of 60 per cent of our expenditures for circular letters and postage to auxiliary service according to the plan we use in our office in our circular work.

I would divide the subject into business-getting and auxiliary selling service, and cut out the word "maintenance." I do not mean that the auxiliary selling service is a substitute for the term "business maintenance," because I believe that auxiliary service goes farther than the word "maintenance" would go. To maintain a thing, does not exactly express the idea of a service that we should give to the customer. That is just a part of handling those cattle. You have got to charge that service to the selling of them or in the operation of the business. I do not mean that any of this service constitutes an actual selling of livestock, but I believe that it is chargeable to it. The appraisal service is available to all customers. We try to render it to all of our customers who ask for this service. I hesitate to spend the money if it is some new man, where I feel like we would lose money by giving him that service and he is not in that class of our regular trade. I think it would be disastrous at the present time to make a special charge for this auxiliary selling service, unless all other markets in competition with ours would do likewise. That would be mighty hard to bring about on account of our geographical location. These pastures to the west of us take some of that particular service. I grant that if every market in the country, not only terminal markets, but the community markets, had some extra service charges that would be sufficient to counterbalance the extra service charges for this auxiliary selling service, that would be O. K., but I doubt very much if we should come out boldly and list in this tariff a special charger whether we would get anywhere with it. I think it would hurt the terminal markets and have a tendency toward decentralization of business.

Our fat-steer salesman received a letter two weeks ago to meet a feeder of livestock out at Emporia to look at his fat cattle. This feeder intended to ship those cattle the following Sunday. In that particular instance that was what I would call really a prospect. He had never shipped to us and our firm debated whether our Mr. Sanders could go out and look at those cattle, but we finally agreed to send him. He went out
1338 there and there was a Chicago man present and there was a St. Joseph man present. The Chicago man told him his cattle would bring the highest price. Consequently, Chicago got the business. If other firms would see that we were not rendering that kind of service that was demanded of us, naturally they would avail themselves of that opportunity.

It would not be practicable to vary the charge which we make for selling livestock depending on whether the customer desired this auxiliary selling service, because when we publish a rate it has been my impression all the time that it is better to put in a few extra service charges, but if we start tucking in this extra

charge on this class of business and that class of business we run our market into a state of turmoil. We have some customers who consign large consignments of livestock to our firm who do not request this appraisal service. I think this caption "soliciting" has just been ridden to death.

With respect to the caption of "exchange soliciting" in the Government audit, I mean that that money that each market agency spends in that direction is the centralizing of a fund of money to help maintain the Kansas City market in the way of price quotations and in the way of concerted service to the trade, and in the way of the development of the market. When we get into the development part, there are innumerable ways that the Kansas City Exchange can help in this marketing area of ours in development work. We have the Boys and Girls Club to take care of and other acts of development. If we are going to be an outstanding market we have got to spend some money in that direction, because it is a marketing cause that we feel that it is best to chip in and centralize that fund through the exchange. With that money we make an effort to maintain the reputation and the servicing of this development work for Kansas City. That is more or less a contribution on the part of the agency to the central body, the exchange, for them to help the full community; that is, everybody in this market here. To a degree, the prime object of that activity is to attract livestock to this market and to maintain the market. If we do not do something like that we would not maintain a market or develop it. If we do not do that I feel that the livestock would go to some other market.

1339 For the two weeks shown by exhibit 203, our receipts of cattle and calves varied more than they do at any other season of the year. Every morning I go down to the yards and go through the pens with the boys themselves. We discuss values together, but I don't make any actual sales, but I consider that a part of the selling of those cattle. I remember that on those days referred to on the exhibit, I was out on the yards, but I can not recall how many of those cattle and calves were sold on those particular days and how many were held over. These cattle were sold by a fat-steer man, stocker-steer man, butcher man, and a calf man. I was in the picture indirectly.

On the questionnaire, I placed 25 per cent of my time in the selling part of the business. I placed 40 per cent to general supervision, and the rest to auxiliary selling service and other parts. I do not crack the whip and tell the buyer that the cattle are sold to him, but I do work in selling. I go down to the cattle alley, and because of the fact that I have sold cattle for about 20 years the boys will say: "Let us go into this pen, Frank, and look these cattle over," and in a great many cases I consult with

the salesman of those particular cattle, and in a good many cases I make the decision of the sale even from the office after I have left the yards. Our customers date back in a great many instances to 20 and even up to 30 years, because our family has been engaged in the livestock business in the Southwest and a lot of our contacts have been with men who have owned ranches. Since we came up here we have developed what we would call at the stockyards a native business, but I do think that the great per cent of our business runs to what we call string business.

If the flow of business were even in its nature, the unit cost so far as our firm is concerned would be reduced, but this auxiliary selling service is the thing that is separate and apart from the actual selling here on the yards, although it indirectly relates to it and should be chargeable to it. In these kinds of times, I believe that if this same volume that we now have were distributed through the week, it might add to our unit cost because we might have to hire somebody else to render that auxiliary service, whereas with this peak load we have we can use the latter part of the week in rendering this auxiliary service and use the same men that we have to handle our peak load the first of the week in giving that service the latter part of the week. I think this auxiliary service is a growing thing. I do not think that a regular
1340 solicitor would pay any market agency. According to the rules of the Kansas City Livestock Exchange, in order for a person to solicit he has to be either a bona fide owner in the firm, a resident of Kansas City, a bona fide cattle, hog, or sheep salesman or order buyer, and there is a further requirement that they have to sell livestock on the market for a certain period of time before they can get what we call a solicitor's permit. They cannot devote all their time in the country. A certain period of time has to be spent in the selling or doing the thing that they are supposed to do on the market.

The amount of $134.90 for charity and donations appearing on the blue audit was given by us to our community chest. If I included that in any legitimate expense, so far as it affects the shipper, I want to withdraw that right now. That is just a charitable donation.

REDIRECT EXAMINATION

In the handling of seconds, or what we call plants, there is a charge of 35 cents per head on cattle and 20 cents per head on calves. In filing Tariff No. 3, I had in mind two things: First, these seconds and plants are delivered to our pens which eliminates that charge. There is no cost in feeding and all *that* the cost in servicing that business is just the selling, weighing, mak-

ing account of sales, and rendering a check. There is no auxiliary service, or very few yard services in the handling of those operations.

(Whereupon the witness was excused.)

MR. R. J. KINZER, a witness called by the respondents, after being sworn, testified in substance as follows:

DIRECT EXAMINATION

I am secretary of the American Hereford Cattle Breeders Association. I have been secretary a little over twenty years and have been connected with the livestock industry all my life. The last Government census shows that there are 127,508 more Hereford cattle in the western and southwestern portion of the United States than all other beef breeds combined.

1341 I have been familiar with the livestock market at the Kansas City stockyards during the past twenty years. I am a director of the American Royal Livestock Show. As a member of an appraisal committee which met on September 28, 1932, to determine the fair cash value as to the year 1931 of the services of certain men engaged in the commission business at Kansas City, we met at the office of the Livestock Exchange at ten o'clock in the morning and worked until five in the afternoon.

Respondents Exhibit No. 204

(Whereupon respondents proposed Exhibit No. 204 was handed to the witness.)

This is the report that was prepared by the committee. I, in conjunction with the other men whose names appear on the second page of this exhibit, prepared this report. I acted as chairman during the sessions. We were furnished a list of the owners or part owners of the various commission companies on the Kansas City yards and requested to place in this report what we considered a fair compensation for these men's annual services. There were seven other gentlemen on this committee with me and there was no name brought before us but what some one or two members of the committee at least was familiar with and many of the men down there we were all familiar with. We went over it very carefully, considered the length of time they had been there, the work that they were doing, the character of the man, and placed in this report what we believed that we would be willing to pay these men if we were hiring them, and in the commission business ourselves. We had before us the information in regard to not only the names of the separate individuals, but the name of the firm with which they were con-

nected, the general nature of the duties they performed and length of service in their present firm and length of service in connection with any market agencies, and experience in the livestock industry, and also the gross commission earned by the firm with which they were connected in 1931, the value of the livestock bought and sold by that firm, the number of head of livestock bought and sold by the firm as appears on the separate sheets commencing on the fourth page of this exhibit. We had
1342 before us the appraisal of the services of a large number of the separate individuals for the year 1929 as theretofore made by some other gentlemen. I wrote the amounts and the initials "R. J. K." after the statement "appraisal value of services on annual basis" appearing on each of the several sheets in this exhibit. That was done after the consideration of the matter of what constituted a fair annual compensation as to the year 1931 for the services of the particular individual named on each sheet. We had in view not only the individuals respectively and separately named, but also the conditions that prevailed in the year 1931, according to our general knowledge as business men who had been in business in that year. We were not governed by the appraisal of 1929.

Together we gave this matter consideration as business men would in the light of what we considered to be the varying capacities and abilities of the men listed. Through past contacts I was acquainted personally with a great many of these men, whose names appear on these separate sheets. Personally I utilized that acquaintanceship in arriving at my own judgment, as I expressed it in the meeting that we had as to what would represent a fair annual compensation. The judgment of all the men did not always agree upon the amount, in the first instance, but it was all agreed to before this record was made on each individual. After it was agreed to I accurately transcribed the dollars representing annual compensation in each case upon the various sheets. I identified them with my initials.

From the information which I had before me at that time, and from my personal knowledge of the business, I believe that the amounts there expressed are representative of fair annual compensation for a full year's service in the case of each of these individuals named in connection with the operation of the various firms or institutions in the livestock commission business with which they are shown to be connected.

CROSS-EXAMINATION

The American Hereford Cattle Breeders Association is an organization founded about fifty years ago for the keeping of the records of registered Hereford cattle in the United States. The

head office of that association is here in Kansas City. That association has to do with pure bred Hereford cattle. Prior to the time I became secretary of the association I was the
1343 head of the Animal Husbandry Department, Kansas State Agricultural College. I had never been engaged in the livestock commission business nor employed by a livestock commission concern, nor engaged in any business on any other public stockyards. I employ about a dozen people in the office of the association here at Kansas City. I pass upon their fitness and qualifications for employment and the nature of their services, office and clerical work. I am head of the office and employ office clerks and stenographers. I have an assistant who does considerable field work or outside work. Our work in the field consists in promoting the interests of Hereford breeders and advancing the interests of the business. When I employ a person, I bargain with him as to the salary that we will pay. We arrive at that salary by the process of bargaining. I presume the one who is seeking to become an employee seeks to obtain as much as he can. We try to give them a fair compensation for what services they can render. In determining what they will be worth, I take a great many factors into consideration. I consider what experience they have had for the character of the work that we want them to do. We try to get all the information regarding them that we can. The salary we are willing to pay has a very close relation to the character of the work we have for them to do. Some of the work is more responsible than others or more difficult to perform. We are willing to pay more for some work than we would for others. If an ex-bank president would apply for a job as file-clerk, I would base my idea of his value upon his services as file clerk. I presume the capacity of the proposed employee to perform good work plays a part in my idea of the value of the services.

I would like to know just what this has to do with the work we had down there. The Hereford Association is not on the witness stand and what I do up there to employ my help.

The ability of a person to do good work is a material consideration in determining the compensation that will be paid for that person. The ability of a person to perform a large volume of good work is a material consideration in determining his compensation.

If two people could each do work of just as good quality, but one could turn out 25 per cent more work in a given period than the other, I would consider the one who turned out the
1344 larger volume of work as being entitled to greater compensation. In employing people I would make inquiry and seek to determine the volume of work which they could do.

The typewritten sheet in the forepart of Respondents' Exhibit No. 204, addressed to members of the committee, was handed to the committee when they began their labors. Those are the instructions and the charter under which we worked. That was given to us by Mr. Stebbins, secretary of the Kansas City Livestock Exchange. In the employment of people to work in any line and in the determination of fair compensation for their services, I think consideration should be given to the general, common wages or salaries being paid at the time and in the same locality for similar services. Consideration should be given to general economic conditions, as to whether there was a period of prosperity with a large demand for workers and higher living costs as contrasted with another period in which there was a lack of prosperity, a lot of people out of employment and low living costs. One of the most important factors would be the service you expected them to render and their ability to render it. I know a great many men at the stockyards, but I was not personally acquainted with everyone whose services I appraised. In the case of those with whom I was acquainted, I based my valuation of that person's services upon what I personally knew about them. In the case of those with whom I was not personally acquainted, my valuation was based upon the judgment of the other members of the committee. I deferred to their judgment where they knew the man personally. When two or more members of the committee knew the same man and did not name exactly the same figure, it was a question of debate and settlement upon a figure agreeable to all those who knew him. I took into consideration the value of these men as livestock salesmen, when they sold livestock, and if they also managed the business I gave consideration to their general personality and ability and their ability to attract and hold business to their firm was given weight. I gave further weight to the appraisal made in November 1930, which appraisal is in evidence as respondent's Exhibit No. 32. We gave very little weight to that because we did not know who made that other appraisal. In a general way I know what many of these firms were doing, but I do not know
1345 the exact amount of their gross commissions, the value of livestock they sold, except as the amount was furnished by this report.

I am acquainted personally with Charles D. Henry. We placed $8,000 as the worth of his services because he is considered one of the best fat cattle salesmen in the yards. I base that upon his general reputation as a fat-cattle salesman. That is his principal work and he is a member of the firm, and perhaps helps manage the business more or less. There is also his ability to

draw business to the firm. If I were operating a livestock commission business $8,000 is the figure I would be willing to pay Mr. Henry as a fat-cattle salesman. I think it was in the mind of every member of the committee at the time we placed these valuations, what we would be willing to pay these various men if we were going into the commission business ourselves and needed such services. As to whether I would pay him $8,000 a year if the business were bringing in a gross revenue of $6,000 a year, I think there are many other circumstances that would govern that, whether you are just starting in business and it may be the first year of the business it would not bring it in. I do not believe there is anybody who knows Mr. Henry, and if he was starting a commission business today that would not be willing to pay him $8,000 for his services for the business he would draw. That would be based on the idea that he would build up the business right away and it would render the salary a good investment.

I know Bryant Poole personally. As to considerations which led to the conclusion that his services were worth $2,000 less than Mr. Henry's, we consider that Mr. Poole is one of what you might say one of the newer men on the yards and has not had the experience that Mr. Henry has had, and I do not think was drawing as much trade. Both of these men are fat cattle salesmen. I do not undertake in this estimate of their respective values to say that Mr. Henry could sell cattle consigned to his firm and get any better prices for them or sell them to any greater advantage than Mr. Poole could. Mr. Henry has a wider acquaintance which would naturally attract more business to the firm. In a business of the kind we are dealing with here that wide acquaintance and ability to attract business is a very important factor in the value of the man's services, and it was given weight by the committee.

I have never been called upon to appraise the value of
1346 services of as many people as there are here in any line of work. I have been asked a great many times regarding the value of a great many people. This is my first experience as a member of a committee to appraise the value of people. With respect to the men that I was not personally acquainted with when their worth was being discussed in the meeting of the committee the men who were acquainted with them exhibited a knowledge as to those men's acquaintanceships, personalities, and abilities to get and hold business, the character of the man as to how much business he was drawing, as to what his acquaintance was, how many years experience he has had, his honesty, and whether he was a competent judge of livestock and livestock values. At the time our committee met we were given these sheets upon

which I endorsed the appraisal figures, and those sheets had on them all the data that is now on them excepting the appraisal figure.

REDIRECT EXAMINATION

When I was head of the Animal Husbandry Department of the Kansas State Agricultural College I had occasion to come in contact with employment of various persons. My activities as secretary of the American Hereford Breeders Association takes me to all parts of the United States and brings we in contact with cattle men throughout the Southwest generally. It is estimated that from 75 to 80% of the beef cattle coming to the Kansas City market now carry as a predominant part of their breeding Hereford strains. There has been a very substantial increase in the assets of the association, as well as in its membership to the numbers of Hereford cattle since my connection with it. I have been around the stockyards and out in the alleys and pens very frequently.

During the time I was at Manhattan we were both sellers and buyers at the Kansas City yards, and since my connection with the association we very frequently have to go down there and look after interests of some of our members who are either selling or buying here. In the preparation of Exhibit 204 we took into consideration as best we could those factors which go to make up ability in the conduct of the livestock commission agency as expressed in the various individuals. As secretary of the Association I have frequently been called upon to choose between
1347 auctioneers of cattle. We have a great many sales during the year. I realize there is a difference in ability there just as in cattle salesmanship in the yards. If I was not personally acquainted with the man I did not express an opinion, but depended upon the judgment of the other members of the committee. The judgment of the committee was always unanimous and all members of the committee entered into the judgment that was expressed. There is never a case where the record was made until it was the unanimous consent of the committee.

(Whereupon, the witness was excused.)

MR. ARTHUR P. FIELDING, a witness called by the respondents, after being sworn testified as follows:

I live in Manhattan, Kansas, and am in the grain business, feed business, farming, and livestock business. I have been connected with livestock all my life. I went into the livestock business on my own account about 37 years ago. My father put me in charge of the farming and livestock end of the business about that time and I operated under his direction for approximately 10 years. I

have been in charge on my own account for the last twenty five years. I have had a small breeding herd and have bought stockers and grown them out for perhaps a year and then feed them all out for the terminal markets for the next year. I have four farms near Manhattan. I market my livestock as fat cattle at the public markets. Most of them are marketed at Kansas City and Chicago. In marketing my livestock I have come in contact with men who operated commission businesses at the Kansas City stockyards. That has been over a period of the last 30 years. I was one of the men who acted with Kinzer in valuing the services of the various owners of commission firms on September 28, 1932. I heard Mr. Kinzer's testimony. I think he gave it just as we all agreed on, that the value of each individual was determined on what he could do and his ability to do it. I tried to arrive at a fair compensation in the light of the information which we all possessed. We considered each individual separately. I was acquainted with a number of those men. I think men in the livestock commission business differ in ability
1348 just as they do in other lines of business. I recognized that in connection with the handling of my own livestock. Men to be capable as salesmen would have years of experience, they must know what cattle are worth, and must have the ability to get the highest market price for cattle which they have to sell. He has to keep himself well informed to be a good salesman. It is necessary for him to know where and who to go to, and where he can get the highest market price for the cattle which he has to sell. That will apply to any kind of livestock. In handling livestock I think cattle require greater ability than hogs. I cannot appraise my own cattle in the feed lots as accurately as I can hogs as to value. The acquaintanceship by the men at the market who sell the cattle and the circumstances under which they are fed and with the cattle before they come to market is very valuable to the man who has the cattle to market. In my opinion there is no comparison at all between the degree of responsibility essential to sell cattle as with selling grain. A grain salesman has the grain, the test weight and all the information before him before the grain is offered for sale. When the sale is made of any grain it is posted on a board and they have a lot of things to go by in offering a car of wheat or corn before it is sold. It is different with a cattle salesman. He has to be able to know what cattle are worth before he offers them. That takes years of experience and men of unusual ability in my judgment. There is less of the mechanical about the sale of cattle than there is about the sale of grain. In arriving at the amounts expressed

as a fair unit of compensation we considered generally what we thought men of their capacity were worth on an annual basis in this business. We took into consideration general conditions from an economic standpoint which prevailed in 1931. In my business at Manhattan I have occasion to employ people and I have some general knowledge of what men receive in other walks of life. I utilized that information. I do not employ any high-priced men, but I employ a number of men of capacities that do not require the high salaries of high-priced men in my own business. In my judgment the responsibility that rest on these men whom I employ is not as great as that of the men whose services I appraised. The amounts which are here ex-
1349 pressed as to each of the individuals named are in my judgment representative of a fair compensation to them for a total year's service in the year 1931.

CROSS-EXAMINATION

In connection with our grain business we have two elevators at Manhattan. We buy grain from producers and ship it. I sell feed locally. This is my first experience as a member of a committee to appraise the value of the services of people. I have been consulted by individuals about the worth of different ones at various times. My business acquaintances have asked me respecting my opinion of the values of certain people whom I know. That was just a casual matter in my contact with business. I agree with Mr. Kinzer about what he says about the factors which should be taken into consideration in valuing the services of people and I agree with him about what he said respecting the factors that were taken into consideration in valuing the services whom the committee valued. In the consideration of the men with whom I was personally acquainted I took into consideration the same things that Mr. Kinzer said he took into consideration with respect to the people he was acquainted with. I recognize the difference in general business conditions, employment, wages, and salaries and incomes as between the year 1929 and the year 1931. Everything, including salaries and wages, has gone down in 1931 as compared with 1929. People could not expect to receive as high compensation for their services in 1931 as they did in 1929. There might be a difference downward between 1931 and 1932.

I know Fred Olander, Frank Morgan, Bryant Poole, and C. B. Henry. There are a number of others whom I know and I also know a number of salesmen who were not discussed at all. They were not included in the appraisal. I am acquainted with John

Clay, Alan H. Wilson, and F. H. Connor of John Clay and Company. I believe that the men that sell fat cattle should have more experience and they do have more experience than salesmen who sell stockers and feeders. The values which I put on the services of these men with whom I was acquainted was just what I would be willing to pay these men if I were conducting a commission business and was going to employ any of them to work for me. I would not say that I would give Fred Olander a
1350 higher salary to sell my fat cattle than I would be willing to give him to sell my stockers and feeders. He might be just as capable to sell fat cattle as he is stockers and feeders, and stockers and feeders as he is fat cattle. The amount of money I would be willing to give him concerns not only his ability to sell cattle but his personality and his ability to meet people and get business and hold business, and manage the business, and his general ability as an asset to the business. As to the basis for appraising Mr. Olander's services at $8,000 and Bryant Poole's at $6,000, considering that both of them sell fat cattle, Mr. Olander grew up in the yards here and is a very high-class man in every respect and is very capable in his line of work. Our opinion was that he was worth that much more than Mr. Pool. I was not undertaking to say that one who did ship his cattle to Mr. Olander would get a better price than one who would ship to Mr. Poole. I was not trying to determine the amount of cattle that could be sold by either one of them. I don't believe any one would know how many cars of cattle Mr. Olander could sell in a year unless he had a chance to perform that duty. As far as I know he may not be able to sell more than 1,000 cars a year, or he might be able to sell 5000 cars. The same is true of Bryant Poole. Our committee did not have before it any information as to the number of cars or number of head of cattle, hogs, or sheep any of these salesmen sold in a year. Our committee did not have before it any information as to which of these salesmen were the best salesmen with respect to being able to get the best prices for livestock. I have known John Clay for a number of years. In placing the value at $6,000 on his services we took into consideration his knowledge of the livestock industry and his worth to the firm. I think it is hard, very hard to estimate the value of a man like John Clay to his firm or to the livestock growers of the United States. I do not know whether Mr. Clay actually visited his branch here in Kansas City in 1931. My approval of that valuation was based on the fact that Mr. Clay is a nationally known livestock commission man and his ability and personality to draw to the business a great deal of business. The same thing is true of Alan Wilson and F. H. Connor.

REDIRECT EXAMINATION

With respect to Mr. Clay, Mr. Wilson, and Mr. Connor, we took into consideration the fact that they also operate other
1351 agencies. We did not intend these amounts to be representative of the total amount of compensation to which those men were entitled. We figured that this was their worth to the Kansas City house. Mr. Clay's ability to attract business was partly based on his ability to handle business and to supervise and manage the business of a commission firm. We had that in mind as to him, Mr. Wilson, and Mr. Connor. We had that in mind as to the services of those whom we appraised who worked in a managerial capacity. In appraising Fred Olan' at $8,000 a year and his father who has been in the business longer at $6,000, we figured that the fact that he was now a pretty old man and although active in the business he could not devote the energy to it that his son does. We considered the information relating to the energy and activity of these men, just what we thought they could do if they were working in a concern either as a part owner or an employee of which I was myself interested.

RECROSS-EXAMINATION

I have not had any experience myself in the livestock commission business.

I have never been employed in any business on a public stockyards. All the business at John Clay's Kansas City house goes through the Chicago office. I mean by that that all the business of importance like the loan business or anything of that kind has to be O. K.'d by the Chicago office. Mr. Clay's, Mr. Wilson's, and Mr. Connor's work in connection with the branch here at Kansas City is general supervision, just the same as their other branches scattered throughout the country. When I sat with this committee to make these appraisals, all the information I had respecting these men was what I knew of them personally, plus what is stated on each of the sheets on which the appraisal was made, and the knowledge of the other members of the appraisal committee.

REDIRECT EXAMINATION

As a general rule, a fat-cattle salesman would receive more than a stocker and feeder salesman because of more experience and more knowledge of the business. There would be exceptions in some cases. In each individual case we considered the capacity of the individual salesman as we thought it to be.

(Whereupon the witness was excused.)

1352 MR. W. F. FLETCHER, a witness called by the respondents, after having been sworn, testified in substance as follows:

DIRECT EXAMINATION

I live in Kansas City and was formerly head cattle buyer for Armour & Company at the Kansas City stockyards. It was eight or ten years that I was here the last time as buyer, and before that I had been a buyer here for Armour & Company. In the performance of my duties in that capacity I became acquainted with various men connected with the livestock commission agencies. My duties required my presence at the yards all the time. Buyers for a packer like Armour are of different rank from the standpoint of salary and ability and purchase different grades of cattle. Generally speaking, the buyer starts in first as a calf buyer and works up both in experience and compensation and if his ability justifies it he becomes finally a fat-steer buyer. We generally take the telephone boys and boys around the yards and bring them along up. That system has been followed for 32 years that I know of. I worked up myself. It is necessary for the buyer to correctly appraise before purchase the grade and quality of livestock he buys, and this is quite difficult to do sometimes on such a market as Kansas City. Cattle that may look comparatively cheap on the hoof may become more costly when they get on the rail. The dressing per cent and the quality of the beef are both factors that have to govern, and as they pan out that determines the success of a buyer. The way the cattle have been handled and fed, as well as their natural quality, affects the dressing percentages and quality of beef.

I have heard Mr. Kinzer's and Mr. Fielding's testimony. I was one of the committee which prepared the proposed exhibit 204 and appraised the fair compensation with respect to the year 1931 of these owners of commission businesses at Kansas City. I was personally acquainted with some of the men whose compensation I estimated and determined. I have seen many of these men many times in the course of the actual performance of their respective duties at the Kansas City stockyards. I gave the committee the benefit of my acquaintance and knowledge of the men whom I knew with respect to their relative ability.

All salesmen and buyers are not alike in their capacity and in their ability. There is a great deal of difference in
1353 men in the stockyard game. I agree with the statements made by Mr. Kinzer and Mr. Fielding concerning the methods pursued and the factors considered in arriving at the judgments expressed in this proposed exhibit 204 as to the fair

compensation of these individuals. I utilized the benefit of my years of experience on the yards in making this appraisal. I consider the amounts expressed as representative of a fair compensation for the year 1931 to these men for their personal services, time, and effort devoted to their business.

As to John Clay, F. H. Connor, and Alan Wilson, we considered only that proportion of their time which they devoted to this particular business. As to the others, we arrived at our conclusion on the basis that they rendered a full year's service in the business.

CROSS-EXAMINATION

I am not now actively engaged in business. I ceased to be Armour's head cattle buyer ten years ago. During those ten years I have not been engaged in any business on the Kansas City stockyards. In the course of working up to head buyer I bought all classes and grades of cattle that Armour & Company handled. When I first started to work, I worked down in the hogs yards, and bought hogs. Then they put me over in the cattle yards, and I went to buying calves. I bought sheep for them at different times when their men were gone. It has been 30 years since I bought hogs. When I was with Armour & Company they did not buy the class of cattle known as stockers and feders. They bought only cattle for killing purposes. That would comprise calves, butcher cattle, and fat cattle. I bought cattle at Pittsburgh, Chicago, Omaha, Denver, Fort Worth, Kansas City, and St. Louis. In a way, it was more difficult to buy cattle here at Kansas City than on the other markets. They get a great many more different cattle here than they do at the other markets. They get cattle from Mexico, New Mexico, and all through the West, and they are different grades of cattle. This market is just a little worse in that respect than St. Louis, but not much. They get a few more further-west cattle here than they do at St. Louis, but St. Louis gets a good many cattle from the South and Texas and all through that country.

1354 When I worked for Armour & Company as head cattle buyer I did not to any great extent pass on the employment and the discharge of cattle buyers who were under me. They generally talked it over with me, but they did their own firing from the house. I did not do the hiring and the firing. I never had any experience in the selling of livestock on a public stockyards. I was consulted by other officials as to the employment or the discharge of cattle buyers. In giving my advice and counsel on the matter of employment, I took into consideration the ability a man had, his personality, and the experience he had in the business. By "ability" I mean the ability to

handle the particular job that I had for him. If I were employing a butcher-cattle buyer, I based my judgment on his ability to buy cattle and not on some other line of work. By ability to buy cattle, I mean that he was competent in getting the cattle that would kill out as Armour & Company wanted them to and getting them at the right prices. Another qualification would be that he could do a reasonable amount of buying. As to whether I would give more value to an active man than to a slow man would depend on the results of his work. A slow man might buy his cattle just as good as the fast man, and he might buy them just as good or better. They may overlook a good many bets when they are so active. You have to weigh the thing a little before you make your decision.

Armour had nine cattle buyers altogether in my department when I resigned. I followed the same method in making the appraisal of the value of the services of the men named in respondents' exhibit 204 as described by Mr. Kinzer in his testimony. I took into consideration the same things that he stated he took into consideration. I was not personally acquainted with all of the men whose services were appraised. As to those whom I did not know, I accepted the judgment of the other men of the committee who knew them. My estimate of the value of the services of the men whom I knew depended on my own personal knowledge of them, plus what information was given on those sheets that are now in this exhibit 204. My estimate of the value of their services was based on an appraisal of all of their qualities which I regarded as helpful to the businesses in which they were engaged. I considered their personalities, honesty, integrity, length of service, general reputation, ability as managers of their business, ability to
1355 attract and hold business to their respective firms, ability to sell livestock, and so on. Their abilities vary in respect to all of their activities. I took into consideration that one man might be a very good salesman, but a poor manager, and might not have the personality that attracts people, and vice versa. Where we value done man higher than another, I don't know that necessarily he could get better prices, but he could demand more trade, and he had a different personality. This was my first experience as a member of a committee to appraise the value of the services of people.

REDIRECT EXAMINATION

It is my judgment that the ability of a buyer and the ability of a salesman expresses itself in the long run in the result

that either buyer or salesman procures for those whom he serves and who employ him.

(Whereupon, the witness was excused.)

Mr. C. B. Grant, a witness called by the respondents, after being sworn, testified in substance as follows:

DIRECT EXAMINATION

I have lived in Kansas City since 1881, and was formerly employed by Armour & Company and before that by the Fowler Packing Company. I started at the bottom and worked up to buyer. My employment with Fowler and Armour combined covers a period of 40 years. My father worked for Fowler in Chicago and I went to work with him there at the stockyards. When they sent him to Atchison to their packing house there I started in there. Then we came to Kansas City and they put me over here in the sto yards watching the dock. Finally they made me buyer. Ten years ago I went on a pension with Armour. For a while I was their head hog buyer at Kansas City. I think it requires skill, judgment, and experience to buy hogs. It is possible to have hogs look pretty cheap when you buy them. They look all right on paper according to the cost, but after they are killed you know more about them. Your hogs might cost five or ten cents more than the other fellows, but when they get over to the packing house and are killed they probably would be cheaper on account of
1356 the yield. Anybody can buy hogs. You might say the same with cattle, but I don't know how long they would last. There are times when we have to go pretty fast or somebody will get them away from us. That was during the War. The buyer might overlook something if he would go too fast. He might get some sick hogs or soft hogs, and there are lots of things that he might get. The Government catches the sick hogs now, but in the early days we did not have any Government inspection. We might overlook a load of hogs that was either soft or sick or had the cholera or something of that kind.

Soft hogs are from the South and are fed on acorns or soybeans. When you put them in the chill room they won't chill. They are just like a dish rag hanging up there, and the oil runs out of them.

When I worked for Armour, it was my observation that the ability of the buyers varied according to their experience and natural aptitude for the work. That ability expresses itself not so much in the rapidity of their work as in the livestock they procure. I have heard the testimony of Mr. Kinzer, Mr. Field-

ing, and Mr. Fletcher who, on September 28 last, met at the Live Stock Exchange Building to fix and determine the amounts set out as representative of what would be a fair and reasonable annual compensation for the year 1931 for certain of the owners of commission business at Kansas City. The amounts set out on the respective pages of that exhibit, from the information which I have and which came to me in the course of my work with these gentlemen, I consider a fair estimate of a reasonable compensation to the men there named for the year 1931.

I was acquainted with quite a large number of the individuals. The other members of the committee knew a lot more than I did, and I took their judgment on a lot of them that I did not know. There is a lot of difference as to their relative ability. There is a lot of difference between most salesmen. Just as much difference as there is among the buyers in their ability and in the results they are able to secure. I know some of those fellows never do quit work. They work after they get home, using the telephone to get business. It is not just the work they do down there in the yards by a long shot, but a lot of them work all the time to get business and to serve their customers generally. I know Ed. Blomquist. He worked for us over at the Mistletoe. He started in at Fowler's as a telephone boy.
1357 He is a very hard worker. In making up our appraisal and arriving at our judgments, I considered the energy of these men and their activity. I considered their ability to work and willingness to work to get business. Mr. Blomquist is a good judge of hogs and a competent salesman. I knew Mr. Garrison that worked here for the Farmers Union. He was a competent salesman and was of value to the firm he worked for. There is a wide difference between the value of the different men as salesmen whom I observe working at the yards.

A man such as Garrison or Blomquist might be worth many times the amount per year to a market agency and to the customers of that market agency than a man similarly equipped would be worth. If their business shows they are business getters and they get a lot of hogs. There are differences between salesmen such as Garrison and Blomquist in the way they handle hogs on the market, than other salesmen. They know the game and they know the hogs. As a buyer I like to buy them as cheap as I can, and my success depends on that. To the best of my ability I expressed these relative differences in this appraisal and tried to arrive at a result that would be reasonable.

CROSS-EXAMINATION

This is my first experience as a member of a committee to appraise the value of people's services. I never acted alone as

an appraiser of the value of the personal services of anyone before this instance. I hire a good many people now, but I am not in the stockyards business. Since I left Armour and Company ten years ago I have fed a lot of hogs. I am not feeding hogs now. It has been five years since I did. I do not have any connection with the marketing of livestock at the Kansas City stockyards. By "watching dock," I mean the shrinking of hogs, such as stags and sows.

Like the other members of the committee who have testified, I knew some but not all of the men whose names appear in this proposed Respondent's Exhibit 204. I passed judgment on those whom I knew and relied upon other members of the committee with respect to those I did not know. With respect to these I did know, I considered the same factors and generally made my appraisal along the same lines that the other three gentlemen have.

1358 When the committee met we read over the instructions. I do not remember just how soon afterwards we started to make our appraisal. We took each man separate. We went down the list. The men whom the committee appraised vary in all the many respects as to personality and ability to get and hold business, ability to manage their business and ability to sell livestock or buy livestock. One man may be good in one respect and not so good in another, and vice versa. I took all of those things into consideration.

As a buyer, it was my experience that on some occasions I thought I got the better of a commission man in a trade, and there were other occasions where I felt sure they got the better. There were a few of them here that for a long time would not buy the Farmers Union stuff and we used to lay pretty close to them every day, and I bought their hogs pretty near every day. The bulk of them are pretty tough nuts and hard to trade with.

It is not just the work that the commission man does on the stockyards. They have done a lot of work, while we were at home. They could leave here Friday night or Saturday night and go out into the country and see these people.

There is a lot of difference in men's judgment of doing business down there. I know there are lots of difference in salesmen. We would go with some men and we knew their traits. We knew when they were weak and when they were going to sell them to us. The reason we had an advantage in buying the Farmers Union hogs, as I described, was because they did not have a free and open market on which to sell their hogs. When they had the same opportunity that other commission firms had

to sell their hogs, they sold them all right. The transaction in which I bought 3,600 hogs from the Farmers Union was over ten years ago. They have since got a new salesman by the name of Garrison, and he is not any such a man as they had then.

The commission houses know what the different fellows want. A salesman may have fifteen or twenty cars of hogs. He might have two or three cars that he knew would suit some St. Louis man or some shipper and he probably would not show those hogs to the packer buyers. He would go and get an order
1359 buyer and sell him three or four loads and sell somebody else three or four loads of that kind of hogs. Some packing houses will not buy any rough stuff. There is a lot of fellows that want a load or two of that kind of hogs to cut their prices down so they will show up good for the packing houses. A buyer may be afraid of his job or something of that kind and doesn't want to go to the packing house with his hogs costing away up above everybody else's.

Mr. Garrison was regarded as a very good hog salesman, but I think he was handicapped some on account of being with the Farmers Union. The Farmers Union was not very popular.

As to C. E. Blomquist, whose services the committee appraised at $10,000.00, I would say he gets out and gets the business. I think a firm could afford to pay him that if he could get out and get enough business to make that salary. I think he gets the business. It probably would not be very advantageous to a country bank to employ as its manager the president of the National City Bank in New York. Regardless of a man's ability, there must be some relationship between the salary he would receive and what the business can afford to pay him. I do not know John Clay, Alan Wilson, and F. H. Connor well enough to pass on what they should receive.

REDIRECT EXAMINATION

The Farmers Union was not a member of the Exchange clearing house. I do not know what the conditions have been since it was able to clear its transactions in the ordinary way. At that time Armour and Company and the other packer buyers did utilize the clearing house, as to stuff, except the Farmers Union. The salesman which the Farmers Union had in those days was not as good a man as "Snapper" Garrison in my judgment. He was not as resourceful in getting prices for his hogs.

(Whereupon, the witness was excused.)

MR. SAMUEL R. TROWER, a witness called by the respondents, after being sworn, testified in substance as follows:

DIRECT EXAMINATION

I have lived in Kansas City, Kansas, since 1887, and was formerly engaged in the livestock commission business at
1360 Kansas City. I think I was in the business about 43 years and quit about three years ago. I have not had any connection with the yards since I quit. In the course of my experience at the stockyards I became acquainted with the other owners of commission agencies there. That acquaintance extended back in most instances over the full period of my connection at the market. There is a difference in respect to the relative ability of men in the livestock commission business, as in other lines of business. Some men are better judges of livestock than others; some are more energetic than others and have a larger acquaintance. Some men are better salesmen of livestock than others.

I met on the 28th of September, 1932, with Mr. Kinzer, Mr. Hill, Mr. Fielding, Mr. Fletcher, Mr. Grant, and Mr. McLucas, at the livestock exchange building, and remained there from ten o'clock in the morning until five o'clock in the afternoon. I believe that the instructions on the first and second pages of respondents' proposed exhibit 204 were read at the outset of our work. We followed those instructions. The results in my judgment express accurately a fair annual compensation as to each one of these men as applied to the year 1931. In arriving at those results I took into consideration the relative ability, industry, integrity, experience, personality, and the nature of the duties performed by these different individuals. I was personally acquainted with very nearly all of them. I never had any acquaintance with John Clay. I know all of the employees in the Kansas City stockyards, and I am well acquainted with them, but I have never met John Clay, Alan Wilson, or F. H. Connor. I knew of their connection with that agency.

In connection with the amounts here stated as representative of services on an annual basis as to John Clay, Alan Wilson, and F. H. Connor, I considered the agency here separately from their other agencies. I was basing my judgment as to the time that they would devote to this business on the other individuals whom we took in on the basis of a full year's work. These men were considered separately by the committee, and all the committee acted in connection with each one. I gave my opinion as to the relative ability as far as I knew it of the men as we came to them. The other members of the committee did the same when they knew them. We arrived at the conclusions expressed here on these several separate sheets.

1361 In employing a cattle salesman we usually consider his selling ability and also the amount of business and the amount of following that he has. That following will only come through long experience on the market and acquaintance in the country, and will reflect his ability to sell the cattle properly. If a man renders his customers good service through long years on the market, ordinarily he will have a greater following. I considered it in that light.

I have sold cattle all the time since I have been in the yards. It has been my observation that men started in as yardmen and worked up very often as calf salesmen, butcher salesmen, stocker and feeder salesmen, and fat-cattle salesmen. That was the course of my experience. When I first came here I went to selling butcher stuff. My father was selling the fat cattle at that time. He died about seven or eight years afterwards, and I sold fat cattle the balance of the time that I have been in the stockyards. A successful commission man should be well qualified to do most any part in the business. He should be qualified to get the full market value of the stock consigned to him. The best of them are liable to make a mistake sometimes in selling cattle. On the general average, the man generally gets the value of his stuff. I would not think it possible for a man not experienced to go out and get the market value for a lot of cattle. There are several different things for a man to consider in selling cattle. You have got to know the buyers, and the class of cattle each one of them buys. When I first came to the stockyards they just had two buyers for each packing house, a butcher buyer and a steer buyer. They have them divided up now in divisions, steer buyers in different divisions. They operate on more specific orders now and they did when I quit.

I have sold a string of cattle amounting to almost a trainload to one buyer as one lot. That condition did not obtain when I quit working down there three years ago. There are very few shipped that way. They used to ship them in trainloads, but of late years they don't ship so many cattle, especially fat cattle. They ship stocker and feeder cattle in train-load lots sometimes now, but they very seldom ever ship more than four or five carloads of fat cattle at a time.

My son and I have a farm which he is operating now. We are handling cattle and hogs out there. At the present time
1362 they have to sort these cattle greater than they did, before they are sold. In years gone by, the buyers would buy pretty nearly any class of cattle. A great many of these loads of cattle come in here with different weights and quality that have to be sorted and sold and weighed separately to different buyers.

I have been acquainted with Mr. Fletcher ever since I have been at the yards. I also knew Mr. Grant and Mr. Hill; I did not know Mr. Fielding. The committee was in continuous session practically, except for lunch, during the entire day on September 28. We continued right on with our work between the hours of ten o'clock in the morning and five o'clock in the afternoon.

When we went to the country to solicit business we were always asked what we thought the cattle would bring on the market. Quite often we got requests to come to the country for appraisal work. When it was convenient to go I nearly always went. I became acquainted with the conditions that surrounded the feeding of the cattle. Generally I advised my customers as to when to market their cattle. Sometimes that advice was of advantage to my customer and sometimes it was not. Sometimes I was wrong. In my judgment, these amounts expressed in proposed exhibit 204, on the bottom line, are representative of a reasonable and fair compensation to these men for the year 1931. I heard the testimony of Mr. Kinzer, Mr. Fielding, Mr. Grant, and Mr. Fletcher. I agree with their testimony with respect to the factors which were given consideration in arriving at these amounts.

CROSS-EXAMINATION

We handle a few cattle out on the farm, and that is all the business I have been connected with since I gave up business at the yards. There were a few of them whose services our committee appraised that I was not personally acquainted with. Probably there were some others besides John Clay, Alan Wilson, and Mr. Connor. I do not know how many of the committee were acquainted with those three men. I do not know how much time they devoted to this Kansas City branch of their business. I don't know whether they come here or not. I made my part of this appraisal in the same way as described by Mr. Kinzer, Mr. Fielding, Mr. Fletcher, and Mr. Grant as to the way they made their part. I took into consideration the same fac-
1363 tors which I heard them describe that they took into consideration. The personality of a man in the commission business, his ability to make friends, his ability to go out in the country and meet people and please them and cause them to ship livestock into the stockyards, and to meet them when they come to the stockyards, and make friends with them, are very valuable features to one in the livestock commission business. The acquaintance a man has, the successful way he has of handling the business and handling shippers is what makes him valuable.

When I was in the commission business and was employing a salesman I gave considerable thought to the following that a salesman had and the business he could bring to my firm.

In making this appraisal I gave considerable weight to their qualities along those lines.

(Whereupon, the witness was excused.)

Mr. ERNEST C. HILL, a witness called by the respondents, after being sworn, testified in substance as follows:

DIRECT EXAMINATION

I was formerly employed by Wilson & Company. I was with the company 34 years, as cattle buyer most of the time. I began as cattle feeder in 1898 over at Schwartzchilds & Sulzberger's plant. I worked over there for $50 a month for a couple of years and came over to the yards and worked up to cattle buyer. I followed the buyers around, taking the number of cattle and the kind they bought. I commenced as a butcher buyer, buying cows, heifers, and light stock. Then I got to be a steer buyer, and then head steer buyer. I have followed the general and usual course of advancing. I was head steer buyer about seven years, coming here from Chicago. Schwartzchilds and Sulzberger owned and operated the present Wilson plant. I began buying cattle in 1903. Mr. Wilson bought it about 1915 or 1916. I was buying butcher stuff and went to Chicago in 1912, coming back here about nine years ago. From 1912 to 1924 I was in Chicago. During the last seven years I was head fat-steer buyer here at Kansas City. Those duties required my presence on the yards every market day. Monday and Tuesday are the largest
1364 days. I came in contact during this period pretty generally with the salesmen of cattle at the Kansas City market, and with the owners of market agencies operating there. I bought cattle from all the market agencies which had the cattle that I wanted and best suited my orders. I tried to buy them as cheap as I could.

I noted a change in the methods that buyers followed in this period from 1903 on. They seem to be more particular about the kind nowadays. During the latter period of my employment the orders required a closer grading and sorting to fulfill the requirements. The orders were more specific in character as received by the buyer as to weight, quality, and number of cattle purchased. As a buyer I tried to carry out as best I could the order as to quality and quantity and to get the cattle of that particular quality as cheaply as I could on the market.

I remember the occasion on which a group of gentlemen met at the Kansas City Livestock Exchange Building on September 28 and collaborated in the preparation of proposed respondents' exhibit 204. We met at ten o'clock in the morning there in the exchange building. We continued to work on the so-called appraisal until about five o'clock in the afternoon.

The instructions appearing on page three of this proposed exhibit were read to us when we started to work or we read them ourselves. In arriving at our conclusions we followed them as best we could. We received a statement of appraised amounts relating to some of these individuals as representative of fair compensation fixed by another similar committee as applied to the year 1929. Personally, I knew many of the individuals whose names appeared on those sheets. Some of them had been known to me there on the market for years and I had come in contact with them in the actual performance of their work. I have been on the other side of the fence from them when they were trying to sell them as high as they could and I was trying to buy them as cheap as I could. I gave the committee the benefit of my knowledge and acquaintanceship with the men as to their relative ability in my opinion. I have formed my conclusion as to the capacity of the men in general. I think the amount set out on each of these sheets represents the fair and reasonable compensation to
1365 the individual according to his relative ability for the year 1931. I was looking at the problem in the light of general conditions as they existed in the year 1931. I did the best I could to determine accurately and appraise each individual as to what he should be fairly entitled to in the way of compensation for a year's services in that year.

I have met Mr. Clay of John Clay and Company. To my knowledge he has never sold cattle on the yards. I know Mr. Wilson and Mr. Connor and I know their standing in the livestock industry. In placing $6,000.00 as the amount for the value of the services of John Clay, $2,000.00 for Alan Wilson, and $2,000.00 for F. H. Connor, I appraised the value of the time which they devoted to the Kansas City business.

In the case of the others, I took them on the basis of a full year's time. There are a good many cattle sold at Kansas City that are sort of on the gambling order. The fed cattle are less uniform in quality at Kansas City. I don't know why it is. The character of feed used in fattening cattle affects the quality of the beef and the dressing per cent. It is up to salesmen, as well as the buyer, to watch out for those differences. It makes the buyer's work a little harder. I was acquainted with Arthur Fielding, one of the members of this committee. I have

seen the cattle fed by him frequently in the course of my experience as a buyer here on the market. For years he has been an extensive cattle feeder. He is a good feeder and produces a very good quality.

I have seen him here on the market frequently when his cattle were being offered for sale.

CROSS EXAMINATION

I did not hear the testimony of Mr. Kinzer and the other members of the committee who testified last week.

I was head buyer for Wilson and Company in the year 1931. That company had seven cattle buyers at Kansas City in that year, three of whom were steer buyers.

There were four butcher cattle buyers. They also had a calf buyer and an assistant. In 1931 Wilson and Company bought a few cattle at Omaha.

When our committee met to appraise these gentlemens'
1366 values, we were handed the sheets that made up Respondents' Exhibit No. 204. The committee did not add any names or take away any names. The committee had a similar appraisal covering the year 1929 for such use as it chose to make of it. We made an independent appraisal. I know practically all the people that the committee appraised. I don't believe there were any that I did not know. The information which I had about the men whose names were on those sheets was what I knew about them myself and what is stated on each sheet about each individual man. I saw John Clay myself on the Kansas City stockyards during the year 1931.

It was during the cattle show. I don't believe I saw him here more than once during the year. I do not know whether he did any work in his branch office at Kansas City during that year. I saw Alan Wilson here several times during the year 1931, but I do not know whether he did any work in the office. I did not see F. H. Connor during 1931. I could not answer the question as to how many hours or days they give to the business here in Kansas City.

The factors which I gave consideration in making up my mind as to values in this appraisal were the business they did. I took into consideration their personalities, their ability to make friendly contacts, draw business to their firms, manage their firms well, and their ability to sell livestock. Some of these men are worth more than others. The fact that one gets more than another does not mean that the higher valued man can sell cattle better, or get more money for the cattle he sells. They are

more valuable to the business. Those differences center largly around the ability of the men to draw business to the firm. I have bought cattle at Chicago, Oklahoma City, Fort Worth, and Buffalo. I do not think I have found it more difficult to buy cattle at Kansas City than at any of those other stockyards.

(Whereupon, the witness was excused.)

MR. JAMES B. WALLACE, a witness called by the respondent, after being sworn, testified in substance as follows:

DIRECT EXAMINATION

I am an insurance agent and have been in business in Kansas City, Missouri, since 1901. I testified in the for-
1367 mer hearing in connection with this proceeding. I testified at that time as to the rates then in effect by fire insurance companies generally writing fire insurance upon furniture and fixtures. Since 1929 there has been an increase in those fire insurance rates.

There was a flat increase in rates of 16⅔ percent charged on the property in Missouri, both personal and buildings and that is being charged now. The matter is being handled in the Federal Court and a part of the premium is being impounded in the Federal Court pending a final decision of the Federal Court on the justification of that increase. The right of insurance companies to increase the rates is a subject of litigation. They are collecting the increased rate and impounding the 16⅔ percent on the total premium. I believe it was in 1929 that we had undertaken to write a reduction in the rate of 10 percent below the published rate.

It was found that we would have to charge a 5 percent increase, so that is where we get the 16⅔ percent increase in the rates. So from a practical standpoint there is a 16⅔ percent increase over the rate that I gave in 1929 over the testimony in this proceeding.

At the last hearing I testified that as agent I wrote on behalf of the company, which I represented, practically all the surety bonds given by these respondents to the Secretary of Agriculture and filed with the Exchange, having to do with the integrity of their market operations. I still continue as agent, to handle the bulk of that business. As agent representing the New Amsterdam Casualty Company, I write most of the surety bonds that are executed annually by the respondent members of the Live Stock Exchange.

The fact that Exchange Memberships depreciated in value from $2,080.00 each in 1929 to $1,800.00 per membership at the present

time has been a matter of deep concern to my company in the writing of these surety bonds. I might say that we look upon the membership dues as of greater value than we do the dollars and cents. We feel that the membership entails a cooperation that we will need at all times and especially if there is a breach made under the bond that is most valuable to us. We are still charging the rate of $3.00 per thousand that we made in the beginning in 1919. If the memberships in the Exchange 1368 had no value, I don't believe I could induce the company to write their business at $3.00 any longer for the reason that the tariff promulgated by the Towner Rating Bureau has established a rate for livestock bonds generally, at the markets, of $10.00 a thousand, and with further impairment of the memberships to that extent, I believe it would be useless for me to argue with my company, although I believe that they would consider my advise.

The increase in the rate of Fidelity bonds has been from 10 to 50 percent. The 10 percent is applicable on the bonds at the stockyards. That increase went into effect on November 12, 1931.

The bonds down there at the stockyards range from $5,000.00 to $20,000.00 per employee. A $10,000.00 bond would be raised to $55.00 instead of $50.00. The 10 percent applied regardless of the amount of the bonds. The rate was increased from $5.00 to $5.50 a thousand. Where there is a schedule of bonds for several employees running up to $100,000.00 for a firm, they are entitled to a lower rate than a firm who had one employee at $5,000.00. The 10 percent increase would apply to all of them.

There have been two or three increases in public liability insurance or workmen's compensation insurance. There is pending now an increase of at least 20 or 25 percent that is liable to be made effective at any time.

(Whereupon the witness was temporarily excused.)

MR. W. M. LIGGETT, a witness called by the respondent, after being sworn, testified in substance as follows:

DIRECT EXAMINATION

I live in Kansas City, Kansas, and operate a market agency at the Kansas City stockyards under the name of the Kansas City Livestock Commission Company. I am the sole owner of that business.

I have been operating a market agency or connected with the commission business about thirty years. I testified at the former hearing. The conditions which have confronted me in

the operation of my business have become more difficult in the last year. There have been increases in some of my expenses, such as postage, telephone, telegraph, and tax on checks.

1369 In the operation of my business, in 1931, I endeavored to keep expenses as low as I considered it advisable. I was careful and could not afford to be otherwise. I believe that the expenditures which we made for the purposes indicated on Government Exhibit 114–20 were reasonable in amount and necessary. We spend very little for newspaper advertising. The big part of the item of advertising shown on the exhibit would be chargeable to market letters and personal letters, general advertising, and keeping our customers posted on the market. We get letters and requests every week, sometimes several requests a week to send salesmen out to inspect cattle and pass upon what the cattle would bring on the market. I keep in pretty close contact with my established customers. A commission firm would be taking a risk in selling a bunch of cattle for a man that he did not know and did not know his financial standing. There might be a mortgage on them and he might send the money to the wrong place. We make it a part of our business to know these men and know that the cattle really belong to him, and know where the proceeds should go. If we go out and visit him, we usually get those details in addition to being a help to him in placing a value on his cattle. In the practical operation of my business, it is of advantage to know, not only the financial situation with respect to the ownership and the possibility of a lien upon the cattle, but also as to the pasture leases. We have to take all those things into consideration to protect him against loss in the remittance of proceeds. In connection with our trips to the country, either my employees or I not only appraise the cattle and know how they are fed and pastured, but we get this other information. Customers desire information by market letter from us wherever they have livestock on hand that is soon to be marketed. In addition to sending them market letters, they want me to write a personal letter once a week and keep them closely posted on these cattle and any variation in the market. From this information he ships the cattle, and he will then call us up before he ships them and asks us what they will bring on the market. We have a great many calls of that kind. The fact we have seen the cattle or a salesman has seen the cattle in the country before they come to market is helpful in the actual sale of the cattle on the market. Hardly a day passes that I do not show a bunch of beef cattle to

1370 a packer and invariably he will ask me how the cattle have been handled. If I have been out to the country

and seen them handled I can give him a straight answer. I can tell him whether they are grass cattle or cake fed cattle or been fed cornmeal and how long they have been fed. That very often is quite a help in making the sale. It is important that I as a salesman of those cattle be able to give accurate and truthful information to the buyer if I am to hold his confidence. We did very little advertising in the paper in the year 1931. Possibly it would amount to 5% of the item classed as advertising in the audit of my business. We run a little weekly item in the Drovers Telegram. It possibly costs $5.00 a week. I think $100.00 a year would cover the entire amount spent in advertising in periodicals and daily publications. I would say that 15 to 20% of the item of traveling expense would be chargeable to getting new business and the balance to the regular trade that we do business with, that is, the people who ask us to come out and look after their cattle and make estimates for them. I have an automobile of my own which I use in the business although my expenses incident to the operation of the automobile is listed neither in the audit or the cost study for my firm. We charge to traveling expenses just the expense of gas and oil. The amount for gas and oil is probably included in the $1,600.00 item of traveling expenses. The time that I spend in the country is confined mostly to the latter days of the week when business is light on the market. I am never away on Mondays and Tuesdays. A salesman never goes out in the fore part of the week. He is needed on the market on Monday and Tuesday and usually on Wednesday. If all the salesmen in my firm including myself remained in Kansas City the full week I would not be able in the practical management of my business to reduce my salary account. I do not think that a distribution showing that I spend 33 1/10 per cent of my total revenue in the service of business getting and maintaining would be an accurate reflection of what transpires in my business.

CROSS-EXAMINATION

I believe we have been called on to make more country trips than we ever did in any period before this. Our expense has been heavier although we have reduced expenses in salaries.

1371 We have cut them to the bone. I think my expenses are as great as they were in 1929. It has taken a great deal more time and effort in handling the stuff this past year. The market is gradually going down. It seems to me we are having the lowest prices we have had in years in cattle, horses, hogs, and sheep, and they are harder to sell. It is harder to satisfy the trade and it takes more time and effort. That is

because on a declining market we hold out longer before we will sell. In our case these country trips are more frequent than they used to be. This is because the price is very low and the stock is losing money. A big percentage of these people will not ship their cattle unless a salesman will go out and invoice them on what he thinks they will bring. We do not answer these requests in all cases. An old gentleman down here who had one load of cattle has been in our alley four different times asking me to come down or send a salesman down to pass on his load of cattle. He told me there had been two other commission firms who had passed on them and I just took the stand that I did not need to incur that expense to go and inspect cattle that had already been inspected. Those other firms were firms on this market. I do not often find where another firm will inspect the cattle. It does happen that several firms will inspect the same bunch of cattle. I do not think I ever turned a man down because he had a small bunch of stuff, if I thought he was really in need of advice and I could be of help to him. I do not always get the shipments when I go out and appraise them. On the trip that I just got in from I inspected quite a number of stuff on request and that stuff is in the Chicago market today. The making of these trips is rather an expensive proposition. Most of this inspection work is confined to cattle. I suppose there are cases where sheep salesmen would inspect sheep. I would say 85% of the cattle coming to my firm is inspected by me or some member of my firm before it reaches the market. I have a man that travels in the Southwest. He usually goes down there and leaves the car, and works among those people and helps them sort and classify their cattle. He usually comes in with the cattle. He is not a salesman. He buys some cattle when he is here on order. I expect he spends more of his time in the country than all the others put together. He is listed as a feeder buyer and of course he solicits business. If we were to curtail these trips to the country I presume a big part of our established trade would keep coming to our firm at least, but they
1372 would finally possibly drift away for the reason that we had not given them the service they were entitled to. If a man would write me and ask me to come and look at his cattle and I did not come he would think I was not very courteous and the chances are he would finally drift away to some other firm. The only thing in the way of a decrease in my expenses of operation is that I have cut salaries the first of the year and then I cut them again the first of May. I cut $50 a month on two different men on the first of the year and

on the first of May I cut another $25 on a part of them. It would be possible to get along with $1,700 cash working capital if we wanted to jeopardize our business.

We do not overdraw our account in paying our regular expenses. We do not overdraw except in the purchases of cattle. We start with a regular amount of capital in the bank, but we do not always keep it there. We keep between $4,000 and $5,000 in the business. My business lost money for seven months in succession this year, and that took it down from $100 to $700 a month. That is not unusual. My firm receives the bulk of its receipts in the fall of the year. I have had the experience when the income was sufficient each month to meet my expenses. General expenses were less for one thing, and we had a bigger volume of business, and the volume of business was more steady. I have two other salesmen in my firm besides myself. I sell the beef steers, the heavy feeders, and the stockers. I have a salesman that specializes in the butcher stuff—cows, heifers, and calves. I have another man who, during the busy days of the week, assists us both in selling odd cattle.

A week ago Monday our firm had 24 loads of calves, yearlings, and cows from Oklahoma, Texas, and New Mexico. There was only one owner with the cattle. They wrote us about the cattle and gave us instructions where Mr. Rodgers did not give us instructions. I have another case in mind where we had four loads of cattle from New Mexico and 19 owners, and nobody in charge of those cattle. We had to classify the cattle, sort them for brands, for age, size, and flesh, sell the stuff, and send these 19 owners the proceeds out of that four loads of cattle. That was two weeks ago Monday.

1373 REDIRECT EXAMINATION

If instead of handling the business in these peaks of volume on Mondays and Tuesdays, and in greater volume in the fall than in the other seasons of the year, the business spread itself out evenly throughout the year, we could handle it easier and with less help.

From time to time I have owned and marketed cattle. I am now in the cattle business.

RECROSS-EXAMINATION

I am still interested in a ranch. I do not devote any time to its operation, except that I go out there possibly two or three times a year. I do not give any of my time to the management. My son runs the place, and he consults me about selling or buying cattle for the ranch.

(Whereupon the witness was excused.)

MR. WALTER S. MCLUCAS, a witness called by the respondents, after having being sworn, testified in substance as follows:

DIRECT EXAMINATION

I am chairman of the board with the Commerce Trust Company in Kansas City, Missouri. I was engaged in the livestock commission business first in Omaha, Nebraska, in 1895. I was there about 18 months and then I reengaged in business at St. Joseph, Missouri, continuing there until April 1908. I have been in the banking business continuously since that time. I came with the Commerce Trust Company of Kansas City in 1915 and left in May 1921 to become an offi'er in the National City Bank in New York. I returned to the Commerce Trust Company in Kansas City on November 1, 1922, where I have been since and am today. I am a member of the Federal Reserve Advisory Board, representing this board in the Tenth Federal Reserve District. Since my active connection with the livestock commission business has been discontinued, I have kept generally advised as to the situation in respect to the livestock industry. I have owned farms. I am acquainted with some of the men
1374 engaged in the livestock commission business at Kansas City and St. Joseph. I met with the appraisal committee and participated in the preparation of proposed respondents' exhibit 204. We had before us, segregated as to the names of the concerns, the men whose services were under inquiry as we were advised, and we had statements of the volume of their business and the number of cars of each type of livestock handled and their relations with the concerns, whether cattle salesmen, hog salesmen, sheep salesmen, office men, or what not. I assume these are the identical sheets that we had before us. We had the report of a committee that I was advised had considered this matter as of a former date. In 1929 I think. We had on this committee, not including myself, men who knew most of these men in a personal way or knew about their work. I knew some of them, but not with the intimacy that these men who were formerly cattle buyers and acted in the business and cattle shippers. Some men knew every one, and most all of them knew many of these men whom I did not. The final opinion or final expression of what we were asked to do was compiled and agreed on unanimously on the information before us. The final report which we signed expressed what was the conclusion arrived at generally in that way. I kept for my own self a little compilation that I followed through on it, which sets out those names. Several men did that and then it was expressed finally in this thing we signed and the plan was for Mr. Kinzer to initial it. Mr. Kinzer wrote

in the amounts on these separate sheets appearing on this exhibit and initialed each sheet. I utilized the general knowledge possessed by myself and the other members of the conditions generally that prevailed in 1931 in respect to the value of services or compensation for services of this character as a factor or element in arriving at my final conclusion. I had a copy of the written outline of instructions at the outset of the work. Where I did not know an individual I personally relied on the information that came to me from other members of the committee who were acquainted with the individuals. I considered each man individually.

One major factor, as far as I am concerned, was that in 1931, with respect to the measure of all compensation, whether classified as to what would be the proper allotment to these men as owners as compared with the employed people, or considering the employed people, the proper values under then conditions
1375 were substantially lower than they were in the previous report that we had before us. The changed conditions made that very apparent, and these reports have that factor in them. They are lower as to 1931 than they were in this report of 1929.

As to the competency of these men to sell livestock and so forth, I might have qualified as an expert in that once, but I wouldn't assume that I can now, because there was always the very vital question in the livestock commission business as to what was the value of men's services and what made men's services valuable. In the livestock commission business the elements of ability, integrity, energy, conduct, and all those questions operate in effect in getting at value. When I was active and there is now a great deal of difference in the value of men in that respect in whatever service they perform. Some salesmen are better salesmen than others. Some buyers are better buyers and so forth. Some are attractive to the patrons and attract business, not solely on their salesmanship ability, but on other elements and qualities. It all gets down in the final estimate to the results realized from the man employed, whether his services produce gross returns out of which there is left a net, when the costs are taken out. That is a difficult question, because there are so many men doing many things that enter into the gross and into the final net. When I was active there was always competition for the man who did the job better than some other man. He was able to obtain compensation above another man because the estimate of him would be based on the theory of the net results. The question of compensation was always before the employed and the employer. I think that the employed always thought it was too low and the employer probably always thought it was too high,

but I should say that the real test of it finally got to be what was the net result of a man's employment to determine what he was entitled to in the way of compensation. I believed when I was in business and I believe now that there is not only required a high degree of integrity and ability but that in my experience throughout the transactions were word of mouth transactions with no records. I have been told they have, in all the years, seldom any controversy where daily transactions were involved which were wholly word of mouth. I think that statement alone indicates that the men were possessed of high integrity in handling the patrons' business. In years of my observation
1376 and contact there were very few evidences of a departure from a faithful performance on the part of the salesmen and the commission men in serving their customers. It was my observation that men engaged in the business differed widely in their relative ability and energy just as they do in other businesses. That accounts for the fact that in this appraisal the fixed annual compensation varies from $1,500 in the case of one individual, to $25,000 a year for another individual. Personally, I know more about the $25,000 man than I do about the $1,500 man.

I believe that $25,000 was a fair appraisal of the compensation to him for the year 1931. That man was J. C. Swift. My records show $24,000.

We set the time of John Clay up on the theory of one-sixth of his time applied to Kansas City. I don't remember whether it was one-sixth or one-eighth, but as we worked it out it was greater than the amount that we set up for J. C. Swift.

As to all individuals except John Clay, Alan Wilson, and F. H. Connor, who lived in Chicago and who supervised the business of John Clay and Company at Kansas City, I put my appraisal on the basis of their rendering a total yearly service at the market. As to these three individuals connected with John Clay, we figured a fraction of their time as being devoted to the business. The total of John Clay's time on this basis would have run in excess of $24,000.00 a year. I am personally acquainted with Mr. Swift. In connection with him, I took into consideration all the factors that we took generally, the business done by his concern, and the knowledge of his part in producing that volume of business. He was in business when I was and I knew him then. I have seen more of him as an individual and heard more about him. If we were going into the commission business today, I would think J. C. Swift would be very valuable and would have the high-priced talent that I would seek. He is a man that would be rather outstanding in any line of business in which he might engage. It was my conclusions that these amounts, that appear on these several sheets, of proposed Exhibit 204 are fairly rep-

resentative of what would be a fair compensation on an annual basis to these men for the year 1931 with the exception made as to the three men mentioned. The appraisal given us did not control, but it was an element in the conclusion, because I
1377 knew intimately some of the men who made that appraisal. There are numerous variations in the two reports. There was no percentage reduction. Our report is an independent conclusion although the other report had a place in it. In my opinion a man would be very improvident to contemplate an investment in the livestock commission business on a theory that it would yield a net return of 6 per cent on the capital invested in fixed assets and from 7 to 8 per cent on the capital required to finance the general operation of the business. If the return were limited to the figures mentioned from a banker's standpoint a loan would not be made for one hundred per cent of the requirements in the business. In the livestock commission business you cannot segregate the net return as of 1931 as against 1932 or 1929. The livestock commission business has such peaks of volume depending on production.

CROSS-EXAMINATION

I have read Mr. Kinzer's testimony in regard to the proposed Respondents' Exhibit No. 204. I read it in a hurried way. As to the factors which I took into consideration in fixing the values on these men's services, I think my experience is in accord with Mr. Kinzer's. I started in the commission business at $50.00 a month at the lowest job. I finally became a part owner and sold livestock.

My principal species was hogs. I bought cattle and sold cattle in a minor way. This is my first experience as a member of a committee in valuing the services of the people. The total knowledge and experience which I have to bring to such a problem as was presented to this committee has been gained in my business life. As a part owner of a livestock commission firm, it was one of my duties to pass upon the compensation to be paid to employees in various positions. My position in banks has placed upon me similar duties with respect to employees of banks. In the commission business, when considering the salary which I would pay to employed salesmen, I took into consideration a man's qualifications for the job. If it was a salesman's job, I considered his ability as a salesman, the resulting productivity of the use of his services in the business realized for the concern, his ability to attract and produce patrons or consignments. That is a very important element as I recall it. Livestock salesmen,

like other professional men, frequently have a personal
1378 following. As competitors we probably often thought that the man might have social and personal qualities that produced the patronage when he did not possess the essential qualifications of a good salesman or a salesman as good as ours might be. The social and personal qualities would be a very particular element in that man's relationship with his employer and would bring business to the concern. Sometimes the best salesman did not always have the productivity. I can remember individuals that I thought were attracting business not justified by their ability to serve the customer.

There was also the limit of bargaining that entered in, and I had to give considerable thought and weight to what a desirable salesman was willing to sell his services for. A competitive feature entered into it. By that I mean that other commission firms might seek his services. I rather think that where services are bargained for under competition the figure arrived at would represent the fair market value of those services. It seems to me that that was the important feature. It all has to come back to the net, if I have to pay him more than the net justifies I could not continue it very long if I continued in business. I might desire a very fine salesman but find that his price was higher than the business could afford. Somebody else might be willing to pay it and I could not afford to pay it. I have had that experience. As to Mr. Storts, whose name appears on the third of these form sheets in Respondent's Exhibit 204 there was a good deal of discussion. I knew a lot about him as I was in St. Joseph when he was there. I had considerable personal knowledge about him as differentiating from other men here that I do not and have not known. There was discussion about him, he having formerly been a very active man engaged in selling and buying and having a large following of patronage. At his present age I asked about how active he is today as compared with his activity. He had all the factors mentioned on the sheet on which his name appears and we had more discussion about him than we had about any others. I had my own personal knowledge of him and a general knowledge.

We had the information on these sheets plus the information of the various members of the committee as to the individual man. The former report of the committee that appraised the services of these men for the year 1929 was also used, and we also called in Mr. Stebbins several times to answer specific questions.
1379 Those things constituted the information upon which the committee based their judgment. We did not have before

us the audits made by the Government. I did not know personally a great number of people whom the committee appraised. As to those who were not personally known to me I relied upon what was told me by those who were acquainted with them. Many of these men were in business when I was, and many of them I knew. I did not have intimate knowledge of the details of their business of any of these men. We have some patronage of livestock commission firms in our uptown office, in our banking business.

I am personally acquainted with Mr. John Clay, but I am not acquainted with Alan Wilson and F. H. Connor. I have not seen Mr. Clay for a number of years. The basis of apportioning one-sixth of John Clay's services to Kansas City was on the theory of the ratio of this business to the whole of their business. I think it was based on volume. I do not know the amount of time which John Clay or Mr. Wilson or Mr. Connor devote to the Kansas City branch. I cannot remember how that became the basis of our conclusion, but there was something stated to us that caused us to do that. The same theory as to the application of the time and services to the Kansas City business was made with respect to Alan Wilson and F. H. Connor. I think it was the volume theory that the Kansas City volume was one-sixth of the total volume of the business, and on the theory that John Clay devoted one-sixth of his twelve months to the application of the business. I don't know how much time he spent at Kansas City in that two months or how much time at Chicago and somewhere else. I don't know how that one-sixth got into it, but my memory is by volume theory. I know personally E. W. Elliott, President of the Exchange. I do not know Mrs. T. S. Moffett of the Moffett Commission Company. I know there were two Moffetts, but I could not say which one I knew. I remember vaguely that we discussed Mrs. Moffett, but I do not know what services she performed. I think she had a part in the office end of the business. The value of the $4,000 placed on the services of E. W. Elliott was based on the information that I have heretofore described. I have no individual information personally. As to the $6,000 value placed on the services of Mrs. Moffett I would not be in a position to explain why the difference. I do

not know the effect upon the financial results from the
1380 operations of 1931 of the firm of Swift and Henry, as

J. C. Swift drew out his salary of $24,000 that was not discussed in the committee. As to the difference between the two head men of firm 59, I thought about the productiveness in the getting of the business as the most important thing. That fellow is a business-getting and always has been. When I was a com-

petitor with him I found that out and that is shown by these performance gross figures. I know that that is a big element in productiveness of business. By that I mean in getting business to the firm. As far as the actual buying and selling of livestock I don't know of any element that is an important measure of that difference. I do not know how much time the $24,000 man and the $8,000 man spent in buying and selling, or what per cent of their time was spent in management or any of those things. My assumption would be that each spent all his time in the business. I never knew of J. C. Swift being engaged in the buying end at all, but I don't know whether he is or not. In considering the varying abilities of men and reflecting them in the varying values given, the varying abilities to get the best price for livestock they sold is a part of it. One would be a better salesman than another or one a better buyer than another, but that was only one of the factors. I think J. C. Swift is a man of exceptional executive ability.

(Whereupon the witness was excused.)

H. L. JARBOE, a witness called by the Respondents, after being sworn, testified in substance as follows:

DIRECT EXAMINATION

I live in Kansas City, Missouri, and am engaged in the banking business. I am president of the Drovers National Bank, which is located opposite the Livestock Exchange Building in the stockyards district. I have been president of that bank 21 years. A year before I came here I was in the National Stockyards Bank at National Stockyards, Illinois. I have been in contact, in one form or another, in business or otherwise, with the livestock industry all my life. The big end of our business is the livestock industry and the allied interests associated
1381 with the livestock industry. My bank makes lots of livestock loans. Our peak period is seasonal. We are at our peak period now at this time of the year. As these cattle and lambs get fat and come to market our loans go down. There is a movement twice a year, when that movement in the spring comes again we get what we term the grass cattle which are coming from the pastures out in Kansas. There are two distinct loans that we have. With us it was rather difficult to place livestock paper on secure loans on livestock during the past year or so. Two or three years ago we felt these cattle were too high and we got more particular with our loans and cut our advances down on them. It was not the lack of funds, but we did not

like the loans on the price the commodity was bringing. We have taken all the good loans we can get this fall. In the last six weeks we have written 2,500 letters to country banks soliciting these feed loans. The change in policy is due to our judgment as to the condition in the livestock industry. When a commodity is cheap and nobody wants it that is the time to buy it and the time to loan money on it. When it is high and everybody wants it that is the time to sell, and do not loan money on it. We have virtually no slow or doubtful paper in our bank at the present time. I have had opportunities to observe almost continuously the operation by different commission firms at the Kansas City stockyards of their respective businesses. I am in contact with them every day. I think nearly all of them make a practice of going to the country, that is the progressive ones do. In that business we have men like any other business who are not progressive. They sit around and are what we call chair warmers. I believe the activities of these men in the country, as you have observed them, are helpful and even essential in maintaining the volume of business that is transacted in livestock at the market. A commission firm that is aggressive goes to the country and visits these different customers on their different farms and ranches. He knows how they are handling their cattle, makes comparison of the feeds, and observes how a man is feeding his cattle, if he is full-feeding, or, if he is grazing, how the pasture is, and how the cattle are doing. He can also see how that man is conducting his business and how he stands at home. When that man brings his cattle into the market, if the packer buyer goes out to buy those cattle he wants to
1382 know those cattle have been handled and fed. I would say it would be very essential in the commission business for a man to make these trips to the country. The fact that the commission men are acquainted ordinarily with the cattle as they are in the country assists in the making of loans by our banks. Yesterday I had a loan come in and we did not know whether the man was asking us to loan too much money for his cattle. We went to the commission man and asked him about these cattle, the kind they were, the ages and conditions, and how he was figuring on handling them. This commission man had been at his place and knew all about it. That was all of very material assistance to us in making that loan. There is hardly a day goes by that we do not go to the commission man to find out about the conditions surrounding a bunch of cattle or the condition of those cattle and how they are going to be handled, which renders us a service in making that loan. The fact that the commission man knows about conditions surrounding them and the quality and character of the cattle is helpful to

the owners of the cattle as well as to ourselves and in turn it is help to this market as a whole from the standpoint that we are able to finance the transactions. Every deal we finance here helps this market to that extent and that helps to bring the business to this market. I am cognizant of the fact that commission firms selling livestock guarantee to the purchaser title to the livestock sold. That guarantee is of value to the one who loans money on the livestock when they are purchased on the market. If a bunch of cattle is purchased on the market we do not try to find out the source of the owner of those cattle because they guarantee to us that the title is good. We accept it and loan our money on those cattle accordingly. The hazard to the commission man would be very materially increased if they had no contact with their customers and with the consignors of livestock in the country, or of the financial situation of these various people who consign livestock to market. If they did not go to the country and be familiar with these deals they would not be in a position to handle that business intelligently and to the best advantage. If those men did not go to the country and do that work the market that did do it would gain over this market and this market would dry up and there would not be any market and we would lose our central market. The owners of livestock would suffer. They would be at the mercy of the
1383 buyer who might go out to the country where they would not have any competitive bids for their livestock. In my opinion the central market is very essential to the livestock industry and I believe it performs real service to the livestock producers. In saying that I have in mind all these so-called central markets.

I met with some other gentlemen in the Livestock Exchange Building on the 28th of September. At that time we had several sheets which now appear in Respondent's Exhibit 204. I have not heard the testimony of the other witnesses. We were there from ten in the morning to five in the afternoon. We had a short sheet of instructions as to how we would proceed and we had individual sheets giving the names of the individual owners or part owners of commission agencies in the stockyards and the information contained thereon. We also had a list of the amounts representative of the fair compensation to some of these same men who had appraised them prepared by a similar committee that had to do with the conditions that appertain to the year 1929. We were considering the conditions of these various individuals that existed in 1931. We took the individual sheets one at a time and went over them and discussed them pro and con, as to the amount of business they were doing and the executive ability of the men we were considering, and the serv-

ices they were rendering. We tried to arrive at what in our opinion that man would be worth from an unbiased standpoint. If he was an executive and was the manager of the business we tried to take that into consideration. If he was merely a hired salesman we took that into consideration. We did not value any hired salesman but some of these men might be the executive head of the business and be a salesman too. I felt that the executive capacity in which some of these men worked affected the valuation. The estimation of their executive capacity had a bearing on the salary. Mr. Morgan is the executive head of the business and sells a great many sheep not only for his firm but for other firms. He is a man that is well posted in the sheep business as any man in the market. I expect he has been in it for 20 years to my personal knowledge. We placed a value of $4,000 on the services of this man which I thought was a very low amount. When we consider the commissions that he was getting we figured that was a fair value for his services. These men,
1384 being owners or part owners of the commission business, do have more or less to do with the executive management of their respective concerns. I know them all personally. In a case of firm 59 I think we appraised Mr. Swift at the highest of any man at the yards. We based that on Mr. Swift's executive ability and his manner in handling his business, and his acquaintance. I think he is one of the best posted commission men that we have at the stockyards. His executive ability and his knowledge of the business is an advantage to all of the salesmen who actually sell livestock for Swift and Henry. His guidance to those men and his ability to guide them is very valuable. In my business experience as a banker I find it is considerably more difficult to secure executive ability than it is the ability to perform the ordinary routine tasks of banking. Comparatively few men possess the characteristics that go to make up executive ability. Mr. Swift is an outstanding man at our market, and is so considered by everybody. He has the ability to handle the business and to handle the loans. If it were not for J. C. Swift that firm would not be near where it is today. It is one of the leading firms at our market and Jim Swift makes it so. He is supported by good salesmen and he is supported by his partner, Charlie Henry, whom we put down for $8,000 a year. Charlie Henry is a good salesman and he has some executive ability. The real executive ability in that firm is in this man, J. C. Swift. I believe that was a reasonable amount. Some of them thought maybe we ought to make it higher but we finally agreed on $24,000. We had as members of our committee Ernest Hill, who has been a head cattle buyer for Wilson and Company up until last April; Mr. Fletcher, who was for many years head

cattle buyer for Armour, and Mr. Grant, who had been head hog buyer for Armour up until twelve years ago. In connection with the evaluation of the services of salesmen we had regard for the information which they were able to get the committee as a whole. The appraisal which they put on the relative competency of the salesmen differed between different individuals. I believe the amounts that are set on these sheets are reasonably representative of fair compensation to the various individuals whose services were appraised for the year 1931. I have an intimate knowledge of this livestock industry and the handling of livestock at the yards. I would say that these amounts set out here were as near to an equitable amount as we could
1385 arrive at. If I were going into the commission business for myself I might prefer to hire some of the higher priced men than to employ some of the lower priced men. In so doing I would probably serve my customers better. I think I am personally acquainted with every man who is on this list. I did not let personal feeling or personal friendship control me in any manner or affect my judgment. I tried to arrive at an impartial appraisal.

CROSS-EXAMINATION

I have not heard the testimony of the other members of the committee who appraised the values of the services of the other men in the stockyards as shown in Respondent's Exhibit 204. I have not read the testimony of any of the members of the committee. I know John Clay, Alan Wilson, and F. H. Connor of John Clay and Company. In putting the value on these various men's services we considered their ability and success in handling this business, and executive ability, and the volume of business they handled and their application of their time to the business. We have got some commission firms that are what we call chair warmers. They could not go out in the country, they never do any work, and they just drift along. The business comes to them and they take it. We have others who are aggressive for getting out in the country and hunting this business up and trying to render a real service to their customers. Those men have executive ability. I sat in on each of them and expressed my opinion and gave them my personal observations of these men. We try to arrive at a fair value considering the services that the individual man could render. Those are the factors which influenced my expression of opinion in the committee. It might be summed up by saying that ability to get business, ability to handle business after it is gotten, ability to manage business and the services they render.

Where I put varying values it reflected my opinion of the variance of the executive ability of the men to handle the business. The executive ability of the men was a very outstanding factor. We have men in the commission business that demonstrate that they have very good executive ability, where we have others that are very poor. There might be a cattle salesman who is owner or part owner of a firm and who really is a first-class cattle salesman, but would be a poor manager.

1386 Jim Swift is one of the best managers that we have in the stockyards, without any exception. He is a man that is posted on all lines of business and keeps up with it, and he knows what he is doing all the time. Charles Henry, his partner, is a good salesman, but he does not have the executive ability. I would put a much higher value on Jim Swift's services than I would on Charlie Henry's. Jim Swift's position in his firm is that of chief executive. If Jim Swift would withdraw from the firm, and Mr. Henry was made chief executive, I would not put a value of $24,000 on Mr. Henry's services. He would have to demonstrate that he had that ability first. The same principle applies to all of these men. We value them because the man had the ability. He could handle the business, and another man in that same position might not be able to. We valued the men as individuals and not by reason of the position they happen to be in. If we were sizing up this man and figured what we were going to pay him, or what he was worth, we would have to take that into consideration. If he had very little executive ability he would not get much business. That is the reason that we have so many of these little firms down there. We have a lot of firms that do very little business, and the reason is the executive ability they have. The executive ability would be shown in the success they have had in building up their business, like Jim Swift builds up his business. It is worth money to the man that has it, and he can get money for it.

The values put on the services of these various men by the committee represent amounts which I would be willing to pay these men for their services for the year 1931 if I had owned the businesses with which they were connected. If I were going into the commission business today in Kansas City, Jim Swift is the first man I would want to associate with me, and considering his executive ability, his manner of handling his business, judging it over a period of 20 years, I would say that he would be the first man that I would hire. If I could not get him for less than $24,000 I would hire him if he would give me the same service that he has been giving that business. My answer in that respect would not be changed if I knew that to have paid Jim Swift $24,000 in the year 1931 would have caused his business a loss

of some $30,000. I would not change it for the reason that
1387 Jim Swift is worth the money, whether the business makes it or not. He has got the volume of business, and he controls the business by reason of his ablity, his acquaintance, his knowledge of the business, his experience, and his past record of handling the business. The same principle applies to the other men; that is to say, their worth is the value that the committee put on them, whether their business is able to make that or not.

The fact that there would be a deficit of $256,970.65 for all firms, except the two cooperatives, after making an allowance for the appraised salaries, would not change my opinion as to the value of those owners' services. The business probably may have gone down. They probably are not doing as much business as they did. I still think those men are worth that money, and when the business gets back to normal again there is no question but what they will make it. As to whether I would be willing to pay them these salaries that I have fixed for 1931, knowing that there would be that big a deficit, I would not be displaying good judgment if I had that knowledge and knew that they were going to lose money. I did not know that they were losing that much money. It looks as if I would have actually lost $256,000 if I had done what I have proposed here.

I know Mr. Elliott of Elliott and Swain who is president of the exchange. I appraised his value at $4,000. I knew that he gives all of his time to his business as hog salesman and manager.

I know Mrs. T. S. Moffett who is connected with Firm No. 65 and whose value is fixed at $6,000. As to why we allowed her $2,000 more than Mr. Elliott, the business of Elliott and Swain is more the hog business than it is the cattle business. The hog business does not require a man to go to the country and look after the business like the Moffett business does. The volume of business is not as great as the volume of the Moffett business. The volume of business of Elliott and Swain was $14,900. The gross commissions of the Moffett Commission Company were $25,000. Here was a woman, as we understood it, who was running that business. She has a man by the name of Baker who helps her run it. As we understand it, she is at the head of this business and owns it. She succeeded her husband who used to be in the old firm of Moffett Brothers and Andrews. The name of
Moffett Brothers has been known favorably at the yards
1388 for a great many years and they have a good volume of business; pretty near double what the other firm has.

I presume Mr. Henderson of the Moffett Livestock Commission Company is in a position to know the services which Mrs. Moffett renders in that business. If Mr. Henderson told me

that Mrs. Moffett took no active part in the business other than to help out in the office in rush times, I would not change my opinion as to the valuation to be placed upon her, because, as I understand it, she owns that business and is responsible for it. It is my understanding that she manages that business. I might be mistaken, but we had none of that information before us when we made this appraisal at all. All we had was what was right here on this sheet. We had nobody to talk to, and all we could base our opinion on was our knowledge of these different individuals. It was my understanding that she was the sole owner of the business. If I knew that she did not manage the business, but was merely the owner, I would change my opinion as to the value placed upon her services. If we had more details, we might change it on several of them, but we did not have the details.

In referring to the protection which I had on account of the guarantee of title to livestock sold at the stockyards, I had in mind the insurance against mortgage and theft carried by the commission firms and also the integrity of the man. As a banker, the integrity of the man to whom I make a loan is one of the biggest factors in whether or not I will make the loan. If I don't believe in his integrity I won't make the loan at any rate.

REDIRECT EXAMINATION

If I were going into the commission business and pay these men the amounts specific in the appraisal, and knew that this deficit of $256,000 had been the experience of the past, I would want to be assured that the rates that I was permitted to charge for the future would be sufficiently compensatory to repair that loss and provide a profit, or I would want to foresee conditions in the business for the future which would better that situation. I would not go into that business if I was going to lose that much money. Changed conditions in the future or higher rates of commission would be the only thing that could change
1389 that situation. I would not knowingly subscribe to paying a man more salary than his gross commission, but then he might be worth more than I would pay him. I would not pay a man $4,000 knowing that the total amount of his gross commissions was $3,628. When we went over that very matter we said "if that man is not worth $4,000 a year he was not worth anything."

As to the rate of interest which we charged on overdrafts, we make a distinction based on the balance that they carry with us. That balance is based on the amount of money that they have in their business. They might sell a load of cattle to a

man in the country and draw a draft with the documents attached, and ship those cattle to him. We give them credit for that draft today and send the draft out for collection. It may take from one to five days to collect that draft. We charge them interest for the amount of money that they have of ours during that four or five days. The interest charged will be based on the balance they maintain with us or the amount of cash they have in their business, or the financial responsibility that backs their firm. I would say that it would average seven per cent. In my opinion, the fact that the value of exchange memberships as held by individuals and agencies is pledged to the security of the market operations has a stabilizing effect and has value from the standpoint of those who deal with these agencies. If a commission firm does not pay its debts or can not pay its debts, the exchange membership, as far as it will go, will protect that indebtedness. It would be applied to its debts the same as any other property, and by "debts" I mean "market obligations." It could not be taken for what he owed in debts contracted in connection with his business on the yards as distinguished from general indebtedness.

(Whereupon the witness was excused.)

(Whereupon, Respondent's Exhibit No. 204 was received in evidence over objection by counsel for the Government.)

Government Exhibit No. 128

(Whereupon, respondents' counsel offered in evidence page 42 of Volume 9, Issue No. 2, of Crops and Markets, for the
1390 month of February 1932, appearing as a part of Government Exhibit 128, but not included in the parts or portions of publications comprising said exhibit as offered in evidence by the Government, and particularly referring to the figures showing the average price on the farm of all cattle and calves for January 1, 1932, as being $26.64 per head, swine $6.14 per head, and sheep and lambs $3.40 per head. He also offered the tables appearing on page 48 of the same publication which give the farm value of cattle and calves by States, and pages 52 and 53 which give the same information in respect to sheep, and pages 54 and 55 relating to swine.)

J. B. WALLACE, a witness having previously been called by the respondents, returned to the stand and testified in substance as follows:

DIRECT EXAMINATION CONTINUED

Accident insurance as applied to livestock men has shown changes since 1929 and 1930. A new manual came out in 1932

that changed their classification which would bring them up to almost double what they paid before. As to executives or office people or members of firms that might be in the yards only for a small part of their duties, they were increased 20 to 25 per cent. An ordinary policy written for $5,000 and $25 a week would cost an attorney or a man uptown $25, and would cost the man down in the livestock firm $35 to $37.50. If he engaged in yard work, it would cost him $42.50 for the same policy.

The fidelity bonds were increased ten per cent on November 12, 1931. Automobile public liability was increased ten per cent in January 1932, and there have been some increases on cars since then. Previous to then and after April 20, 1931, there was an increase in fire and theft insurance ranging from 10 to 25 per cent, including restrictions applying to accessories. There is a flat charge on accessories from $8.50 to $12.50. There have been increases in public liability, but I have no record of livestock commission firms carrying public liability, for the reason that public liability rests on the yard company mostly. The responsibility of the commission firm would be more or less
1391 contingent, and we would not urge the carrying of that form of insurance along with the other insurance.

As to the liability in case cattle get loose, or somebody gets hurt by a loose steer, it is my opinion that is mostly a responsibility of the stockyard company. A man goes out there, enters the yards and either rents a horse of the stockyard company or he gets on top of the fence, which is maintained by the yard company. An insurance man would be well justified in soliciting and urging that contingent liability insurance in order to fully protect these livestock commission merchants and others down there. In the last three or four years, insurance men have felt that it would be useless to argue to get them to take this additional insurance if they felt that they could get along without it.

CROSS-EXAMINATION

The increase of 16⅔ per cent in fire insurance took effect June 1, 1930.

The company has intimated that it does not think that it has as good a source of protection in the Live Stock Exchanges at other markets. From remarks or comments in letters during the past five or ten years, or maybe more recently, I remember them saying that they would not write bonds at St. Paul and Fort Worth at any figure at all for anybody. I am referring to bonds under the Packers and Stockyards Act. I will say my company writes the bond of most market agencies at the Kansas City stockyards.

The fidelity bonds are the bonds which the employees of the market agencies give to the market agencies to insure the fidelity of the employees. I write a good many of those bonds at the Kansas City Stockyards. The employer pays the premium for the reason that the employer is a beneficiary of the insurance, and he should be. The rates on these bonds have been increasing. The rate was increased from 50¢ to 55¢ per hundred.

I have lost nearly all my accident business down there.

I write the workmen's compensation insurance, but it is controlled by state law in both Missouri and Kansas.

These increases which I spoke of in the premiums on that insurance were made by the companies subject to the tribunal
1392 set up by the State. The increase in the premiums is from 20 to 25%. The insurance department of neither Missouri nor Kansas has made any public statement, that they are going to permit an increase in these premiums, as far as I know.

REDIRECT EXAMINATION

I would not come in contact with the men that have been injured recently as much as I did when I had more policies. I remember about the accidents to Graham Witherspoon and Jim Ryan in the last year or two. When I testified about accidents I had in mind 20 or 25 years' experience in writing quite a nice volume of accident premiums, and I did not feel that there was justification for raising the rates as far as Kansas City was concerned.

(Whereupon the witness was temporarily excused.)

MR. JOHN W. ROBERTS, a witness called by the Respondents, after being sworn, testified in substance as follows:

DIRECT EXAMINATION

I am the same John W. Roberts who testified in the former hearing. My line of work has continued to be the same since my testimony in the former case. During the interval I made a study of the costs of terminal market operations at St. Joseph, Missouri, and down to date have been practically constantly engaged in cost work principally on the railroads. Since that time I have handled a case before the Interstate Commerce Commission involving the recapture of alleged excess earnings for the Louisiana-Northwest Railroad Company; the Interstate Railroad Company; the Peoria and Pekin Railway Company, and the Abilene and Southern Railway Company; and also appeared in the Six-Hour-A-Day case on behalf of the Brotherhood of Railroad Trainmen.

During the fore part of September, I came to Kansas City and talked with the Kansas City Livestock Exchange concerning the reopened case. It was explained to me that the exchange was desirous of making as extended an examination as possible of the conditions prevailing during the year 1931 which was to
1393 be used for test purposes in the re-opened case. It was also desired to determine as accurately and as extensively as possible the relative revenue yield of the rates published in Tariff No. 3 as compared with those resulting from Tariff No. 2. It was also explained that on account of the very substantial changes in the volume coming to the market in 1931 as compared with 1929, the same having substantially decreased and changed somewhat as to its constituency, that it was desirable to make another test of the service cost based on the experience of 1931, and in the light of the price levels and other changes then obtaining. It was decided to use the audits of the books and the compilations made by Mr. Bachmann to the fullest possible extent in setting up a cost study based on the experience of 1931. It was also decided that the particular purpose of that cost study was to throw some light on the relationship of the revenue produce of Tariff No. 3 as compared with the unit costs of similar services as they were experienced in the year 1931. It was finally decided that we should undertake an analysis of the account sales of 1931 for all firms which would permit of an application of the provisions of Tariff No. 3 and at the same time compiling from the same account sales the revenue yield of Tariff No. 2, with the object of comparing the gross yield of both tariffs.

Respondents' Exhibit No. 206

This exhibit consists of three sheets, and its purpose is to bring into comparison the unit costs per head, as developed by my study, and the unit revenue per head representing the yield of Tariff No. 2 for 1931, as developed by Mr. Bachmann. This comparison is shown by individual market agencies and for 59 firms collectively which are exclusive of the cooperative agencies Nos. 10 and 36 and agency No. 8. The comparison is shown by species, selling and buying service, and by the several arriving sub-accounts under selling service. The unit costs shown on this exhibit are taken from the last line of the respective agency brackets on Exhibit No. 207.

The unit costs shown under the selling service arrival accounts are adjusted within each species to reflect the relative ability to pay as indicated by the average gross proceeds per head. It may be understood that the aggregate species costs, as found, are not

adjusted with respect to each other. The adjustment is
1394 confined to the selling service costs found with regard to each species, which is to say that out of respect to the average gross proceeds per head for animals arriving by rail, by truck, and the seconds, respectively, there has been a shift made in the costs to reflect their difference in value and their relative ability to pay, as indicated by the gross proceeds.

From the bottom bracket of Sheet No. 3 of the exhibit, it may be noted that in all save five instances the average commission revenue per head is less than the unit cost per head. The five instances where the costs as found are in excess of the unit revenue are hog-buying service, sheep-selling service on the rail, drive-in, and total selling accounts, and sheep-buying service. The excess in each case is very slight.

Respondents' Exhibit No. 207

This exhibit in entitled "Final Cost Statement Recapitulating Elements of Operating Cost, Including Return on Investment, Showing Unit Cost Per Head." It consists of nine sheets, and on it are assembled the respective principal classes of expense which comprise the market agencies' operating costs, and the amount which should be allowed as the equivalent of eight per cent per annum on the invested capital, which items collectively comprise the total cost which should be covered by the yield of the service rates. The total costs are shown for the three species and subdivided as between selling and buying service and broken down for the respective arrival accounts. It is shown by individual market agencies and at the bottom of page 9 it is recapitulated for the 59 firms covered by this study. The aggregate cost assigned to each of the species service and arrival accounts is divided by the number of head handled under each account to arrive at the unit costs per head.

The selling service cost developed has been adjusted as previously mentioned to reflect their relative ability to pay as measured by average gross proceeds. This adjustment is shown on the fifth line of each bracket on the nine sheets which comprise this exhibit. The purpose in presenting this cost study is to provide material for consideration in determining what adjustment, if any, may properly be made in the tariff rates presently prevailing, as reflected by Tariff No. 3, and the further purpose is to compare the unit costs experienced in 1931 with the unit commission revenue derived from Tariff No. 2.

1395 The general purpose of the segregation by weight classifications in the case of hogs and cattle in Tariff No. 3

was to recognize the varying value per head which attaches to animals in these respective weight classes.

At the time Tariff No. 3 was devised, the information at hand respecting the average gross proceeds derived from the sale of cattle and calves in the several weight classifications was very meager. Such information consisted principally of the known fact that the gross proceeds derived from the sale of animals in each weight classification were less than those derived from the sale of animals in the next higher weight classification. As a consequence there was introduced in Tariff No. 3 an attempt to fix the service charges with some regard to the relative ability to pay. In this study we have been able to obtain more specific information respecting the average gross sales proceeds of cattle, calves, and hogs which fall into the category of weight classes established in Tariff No. 3.

On the Kansas City market, cattle, hogs, and sheep, respectively, are handled in departments maintained by the respective market agencies which are generally pretty well defined. Because of fundamental differences inherent in the three species, in the number of head comprised in consignments, in the manner and time of their arrival, the manner in which they are handled in the yards, and the man-time required to perform the necessary services, it is quite manifest that the average cost per head of handling cattle and calves collectively is more than the average cost per head of handling hogs, and the cost per head of handling hogs is more than that per head of handling sheep. It seems eminently proper that each species should be made to carry the selling and buying expense which it occasions as nearly as it may be determined. No attempt has been made to adjust the species total costs. As respects the aggregate costs determinable for the respective species, there is the patent fact that such costs may not be ratably distributed over the total headage handled with equitable results. The manner in which the volume arrives and the quantity contained in the consignment available to be sold has a great influence on the cost of the service which it receives. The principal difficulty encountered in the distribution of costs in this industry has been to break down or allocate the aggregate species cost to the subdivisions thereof which 1396 receive services which are separately rated in the tariffs.

Rail arrivals represented 80%, truck arrivals 14%, and seconds 6% of the total headage of cattle and calves received by the 59 firms covered by this study in 1931. In the case of hogs, the rail arrivals were 33%, truck arrivals 57%, seconds 9%, and split commission headage 1% of the total receipts. In the case of sheep, the arrivals by rail were 86%, by truck 11%, and seconds constituted 3%. The greater portion of the

rail arrivals of all species reach the market and are serviced on the first two days of the week. Truck arrivals not only use the first two days of the week, but with varying intensity occupy the remaining days of the week. Truck arrivals are in the aggregate insufficient in the case of any one firm as in the case of all firms to fully occupy the service capacity of the agency. This is also true with respect to rail arrivals and seconds. Considering the demands upon the service, the perishable quality of the product which it serves, the open six-day market and the lopsided patronage of it, and the stand-by nature of the service which the agencies must render, it is easily perceived that the cost-finding problem presents difficulty which may be well-nigh insurmountable.

Chief among the difficulties is the equitable disposition of what actually proves itself to be stand-by expense. Any method of distributing cost on the basis of time actually devoted to handling the different mode of arrival would burden trucked-in headage with a greater cost per head than any other class of business. This is for two reasons: first, the smaller consignments and the fewer number of head handled in operations requiring the same man-time, regardless of the number of head handled; and secondly, truck-in arrivals contain a greater variety of grades and classes of animals than consignments embraced in other modes of arrival. All classes of receipts are interdependent in maintaining the market and conjointly they should be made to bear their fair cost of maintaining the market facilities. If the truck-in business were not available to occupy a part of the stand-by capacity which has to be maintained to meet the heavy demands of rail arrivals during the forepart of the week, the cost of handling the rail arrival business would necessarily be greater if the same marketing opportunities were provided. Likewise, if the rail-arrival business were not
1307 available the trucked-in business by itself would be insufficient to maintain the advantages of the existing market, and would entail handling costs far in excess of those prevailing under present conditions.

The adjustment respecting the relative ability to pay is predicated on the average gross proceeds per head for lack of a more exact measure of the relative ability to pay.

Respondents' Exhibit No. 208

This exhibit is entitled "Sample Computations—Adjustments within Species Costs to Respect Ability to Pay as Measured by Average Gross Proceeds—Selling Service Only." This exhibit consists of a single sheet. The adjustment was actually com-

puted for each and every one of the 59 market agencies covered by this study, but on Exhibit No. 208 the figures are shown only for the first six firms involved and is introduced as a sample sheet to illustrate the method of computation.

On the first line in the body of this exhibit, which is entitled "Average Proceeds Per Head, 14 Firms," there are shown for rail, drive-ins, seconds, and splits, under the respective species, amounts expressed in dollars and cents representing the average sales proceeds realized from animals falling in those categories which were sold by 14 firms during the year 1931, as set out on Respondents' Exhibit No. 248. These 14 agencies handled approximately 30% of the total volume of each species sold by the 59 firms. These amounts shown in the first line of this exhibit are used as the standard average gross proceeds per head for the purpose of making this adjustment. With respect to the brackets in this exhibit which relate to the respective agencies, it will be noted that on line one is shown the number of head falling in each arrival account. On line two is shown the product of multiplying the number of head by the average gross proceeds per head as shown on the line at the top of the page. The product developed in columns A, B, and C of the form is totalized at column D to arrive at the aggregate average gross proceeds.

Respondents' Exhibits Nos. 209, 210, and 211

These exhibits deal with the salary and wage element of the total operating costs. This element consists of com-
1398 pensation of worker-owners' services and the other to the salaries and wages paid non-owner workers.

The major number of the respondent agencies are enterprises conducted by an individual operating as sole owner of the business or by two or more individuals operating as co-partners; or by a corporation whose stock is held either in its entirety or practically so by individuals who devote their entire time to the conduct of the corporation's business. Monies drawn by any owner for personal services rendered are manifestly amounts which fall in one of three categories, to wit:

(1) Regular monthly stipends fixed with a predominating self-interest;

(2) The amounts withdrawn from the earnings of the business which are regulated not by the worth of the services rendered but by the next yield of the service rates which are under investigation with this proceeding; and

(3) Amounts fixed by their co-owners, which may be based not solely upon the worth of the personal services rendered, but partially in recognition of monies invested in the business.

It must become apparent that for service cost finding purposes the cost value of the personal services so rendered cannot be determined on a reasonable basis and used along with the expenses represented by the disbursement of cash.

The Government accountants have dealt with such by superficialities and estimates of their own making in a way which is both inconsistent with facts and destructive of the conclusions at which they finally arrive. In connection with the 59 firms, 131 positions were during the year 1931 occupied by individuals who were owners or part owners of the market agencies which they served. In everyone of the 59 agencies save one are to be found positions occupied by workers whose remuneration, if any, was determined on a basis which was dominated by self interest even though there may not have been opportunity in all cases to have satisfied that self-interest.

In setting up the amounts of salary and wages used in determining the aggregate unit service costs protrayed in the Government's Exhibits 115 and 115–A, Mr. Bachmann has seen fit to accept the salaries appearing upon the books as having
1399 been paid to worker-owners and part-owners whether they were fixed and paid in regular amounts monthly or whether they represented the monthly withdrawals of the individuals. In instances affecting 14 individual owners or part-owners attached to 10 of the 59 agencies he used the amounts shown upon his blue audits as net profits in lieu of remuneration of owners' services. In other cases, where books did not show a salary, as having been paid the owner, but did show net profits for the year, the net profits were not used as representative of owners' salaries. The sum of $432,597.32 or roughly one-third of the total service costs for the 59 firms represents the Government accountants' arbitrary determination of worker-owners' remuneration for services rendered. This result is attributable solely to the net yield of the rates, the reasonableness of which we are here seeking to test by comparing them with the unit cost of the services rendered to earn them.

To provide as ingredients of the costs of the respective agencies amounts which may represent fairly the cost value under current conditions of the personal services rendered by owner-workers and to dissociate from such amounts the color of self interest, self served, the determination of such amounts has been left to a board of appraisers appointed by the exchange, whose findings and testimony in support thereof already appears in this record.

Exhibit No. 211 consists of three pages and sets forth in detail the owners' salaries as they were appraised by the board. In this exhibit the appraised salaries of owners or parts thereof ap-

pertain to Kansas City market operations, which have been taken into my costs are shown in Column D. For the 59 firms they aggregate $597,775.00. With respect to certain individuals, part of whose time was devoted to the loan or other business, the sum of $11,838.17 has been deleted.

The per cent of time devoted to extraneous affairs was shown in each case on the Government questionnaires.

On this Exhibit No. 211, the balance of the appraised salaries, which relate specifically to the conduct of the market agencies at Kansas City, has been distributed to the several functions of work upon which the worker was engaged during the year 1931 according to the information returned on the Government questionnaires.

1400 Respondents' Exhibit No. 212

This exhibit is entitled "Distribution of non-owners salaries and wages 1931 by firms—as shown on Government questionnaires with exceptions."

Exhibit No. 210 consists of one sheet and is merely a consolidation by classified accounts of the owner and non-owner salaries and wages dealt with particularly on Exhibits Nos. 211 and 212.

Respondents' Exhibit No. 213

This exhibit is entitled "Distribution of selling portion of all salaries and wages to arrival accounts—on the basis of number of head plus number of drafts."

As the result of discussion with salesmen and yardmen, I was convinced that the time study could not be fairly used as a basis for distributing the salaries and wages expenses between the species arrival accounts. I was led to adopt the same basis used by Mr. Bachmann, which is to say the number of head combined with the number of drafts. This basis was used for lack of something better. Its use makes some differentiation to respect the average number of head per draft in the different arrival accounts. I plotted the effects and found that the head plus drafts gave a distribution which fell between that resulting from the use of head on the one hand and drafts on the other hand, and it resulted in charging an account with a lesser amount per head as the average number of head per draft increased, which seemed to me to be a logical result. I do not know whether the head plus draft basis of distributing this expense to arrival accounts gives an approximately correct result or not. There is no means of testing it. It gives equal weight to the number of head handled and the number of drafts in which the animals were sold.

Exhibit No. 214

This exhibit is entitled "Number of head (from Schedule 15) plus number of drafts (from Schedule 5 A)—for distribution on selling salaries to arrival accounts."

Exhibit No. 215

This exhibit is entitled "Distribution of yarding (selling) portion of all salaries and wages to arrival accounts—on basis of number of drafts per Schedule 5–A."

1411 The number of drafts handled in each arrival account has been used as a basis for the distributing of salaries and wages for yardmen assigned to species accounts in accordance with the information obtained from the Government questionnaire, after having apportioned such amounts between selling and buying service, also on the number of drafts as shown on Exhibit No. 216.

Respondents' Exhibit No. 216

This exhibit is entitled "Distribution of total yarding salaries to selling and buying—on basis of relative number of drafts by species."

Respondents' Exhibit No. 217

This exhibit is entitled "Number of drafts by species—for distribution of total yarding salaries to selling and buying."

Respondents' Exhibit No. 218

This exhibit is entitled "Distribution of office salaries to selling and buying by species and to arrival accounts—on basis of number of account sales, purchases, and drafts, respectively."

Considering all modes of arrival together, the drafts per account sale *per* cattle and calves was found to be 2.9; for hogs 1.7; and for sheep 2.1.

Respondents' Exhibit No. 219

This exhibit is entitled "Number of Drafts, excluding buying, and per cents for distribution of office salaries (selling) to arrival accounts in each species."

Respondents' Exhibit No. 220

This exhibit is entitled "Number of Account Sales and Purchases, including seconds and splits and per cents for distribution of office salaries to species and to selling and buying."

Respondents' Exhibits Nos. 221 and 222

Exhibit No. 221 is entitled "Distribution of B. G. and M. salaries—element "A"—Circulars, Correspondence, Etc.—selling portion only—on basis of number of head to rail and drive-ins only."

1402 Exhibit No. 222 is entitled "Distribution of B. G. & M. salaries—element 'A'—Circulars, Correspondence, Etc., to selling and buying by species—on basis of number of account sales and purchases."

The proportion of salary expense, which is chargeable to selling service, is distributed between the species accounts and each species' proportion is further distributed to its rail and drive-in arrival accounts.

The apportionment of expenses between selling and buying services is made on the basis of the relative number of account sales and account purchases rendered. The species proportion is assigned to its rail and drive-in arrival accounts on the basis of the number of head of animals handled in each account. Seconds and split volume are excluded from participating in this expense for the reason that none of the expense is devoted to the procurement of the traders' business represented by seconds handled and from the nature of the split volume it cannot be determined whether it should be assigned to the rail or drive-in accounts. As nearly as may be ascertained, this expense is attributable to efforts to hold the business attached to the agency, and to attempt to attract new customers. It represents the time spent by agency employees in the office preparing and mailing market letters and circulars, conducting correspondence with the firm's patrons and others, contacting customers in the office, etc., the purpose of which is to have their patronage continued or to procure new customers. Amounts shown on this Exhibit No. 221 are carried forward to the fourth line of the recapitulation of salary and wage expense.

Respondents' Exhibit No. 223

This exhibit is entitled "Number of Account Sales and Account Purchases, excluding seconds and splits—and per cents for distribution of B. G. & M. salaries—Element "A" to selling and buying."

Respondents, Exhibits Nos. 224, 225 and 226

Exhibit No. 224 is entitled "Distribution of B. G. & M. Salaries—Element "B"—Country trips, selling service only to rail and drive-ins only—on basis of head."

Exhibit No. 225 is entitled "Distribution of B. G. & M.
1403 Salaries—Element "B"—country trips, selling service only to species—on basis of number of account sales."

Exhibit No. 226 is entitled "Number of Account Sales excluding seconds and splits, and per cents for distribution of B. G. & M. salaries—Element "B"—to species."

These exhibits deal with proportion of total salaries and wages appearing in Column J of Exhibit No. 210, which is denominated "Country Trips," and classified "Business Getting and Maintenance Expense."

For the 59 firms, Element "B" of the B. G. & M. expenses amounts to $93,815.15, while Element "A" aggregates $107,529.80.

The country trip expense, characterized as Element "B" is distributed under Exhibits Nos. 224 and 225, and the basis for the distribution is contained in Exhibit No. 226.

The labor expense comprehended in this B. G. & M. Element "B" account represents time spend in the country doing whatever it is that salesmen do when they go to the country. It has always seemed to me that this so-called appraisal work is really in the nature of an auxiliary selling service and not of the nature of business volume promotion. Some of it may be on the border line between performing a continuation of service in the country, which is supplementary and auxiliary to that furnished on the market, and putting forth effort to hold the business already attached to the firm or to procure additional business which is not so attached. It was this indefinite character of this class of expense, which led me to isolate in the 1929 study, from the other, so-called B. G. & M. expense, concerning which there is no doubt as to its character as business promotional expense.

It is not possible from records available to determine what proportion of Element "B" is chargeable to the so-called appraisal trips and what proportion is chargeable to trips made solely for the purpose of soliciting new business or to retain business which the agency has theretofore enjoyed. To the extent that the expense may arise from examination of livestock in the country for the purpose of appraising its progress and development toward prospective marketability, it is in the nature of a service which is auxiliary to that rendered at the market place, and which should not be classified as business promotion. In addition to the time spent in such work, which has to be paid for, whether the
1404 men are in the country or remain at the yards, there is also a considerable out-of-pocket outlay for travel and subsistence expenses which would not be incurred if the men remained at the yards.

If this is invariably true, that appraisal trips to the country are made only in response to requests from customers, it would

seem to remove the expense entailed from the category of B. G. & M. and require its classification as a selling service performed off the market preliminary to the actual selling service performed on the market. The classification of this expense would perhaps not greatly affect the results of its distribution to the final unit costs. The correct classification of it is highly important in the event that the Secretary is inclined to limit the amount of the expense incurred for business getting and maintenance in his consideration of unit costs for rate-making purposes.

The salary feature of this B. G. &. M. Element "B" is distributed to rail and drive-in arrival accounts of the respective species on the basis of the number of head in each account for each species. The total amount assignable to each species, as developed on Exhibit No. 225, is shown in Columns E, F, and J, respectively, on Exhibit No. 224. The percentage which the rail headage is of the sum total of rail and drive-in headage for each species is shown in the next succeeding column to the right.

The amount chargeable to the rail arrival account is shown in the next following column and is the product of the percentage applied to the species total. The drive-in proportion is the difference between the amount assigned to rail and the species total.

On Exhibit No. 225 the expense is apportioned to species on the basis of the number of account sales. It contemplates that each consignment received to be sold should participate in this expense on an equal basis regardless of the number of head in the consignment.

Exhibit No. 226 is supplementary to Exhibit No. 225 and merely shows the number of account sales handled for the respective species relating to rail and drive-in arrivals only, which comprises the basis for the distribution of the expense.

Mr. Bachman has distributed B. G. & M. salary and wages as well as the related travel and subsistence expense amounting to $201,344.95 and $451,142.26, respectively, to species and to arrival accounts on the basis of the commission revenues from the very rates to measure which we are here seeking to provide a yardstick in the form of service costs. Whatever degree of disproportionateness and impropriety may be contained in the rates which produced the revenue will affect his unit costs in like fashion. Remembering that there is another 400 odd thousand dollars of so-called "owners' salary" expense in Mr. Bachmann's cost base, which is not salary expense at all, but amounts which are controlled entirely by the yield of the rates here in question, coupled with self-interest which covers them with doubt as to their propriety for use in a rate-making cost, it will be dis-

1405

covered that nearly 50 per cent of the amount of Mr. Bachmann's aggregate cost possesses infirmities which deprive the figures of probative value.

Respondent's Exhibit No. 227

This exhibit is entitled "Recapitulation of Operating Expenses (Other than Salaries and Wages) Distributed to Arrival Accounts."

Respondent's Exhibit No. 228

This exhibit is entitled "Distribution of B. G. & M. Expense—Element "A," Circulars, Correspondence, etc., Selling Portion only—On basis of B. G. & M.—Element "A" Salaries (Number of head)."

These expenses were taken from the Government auditor's blue audits and with respect to the total amount of operating expenses, exclusive of salaries and wages, there is no disagreement.

Respondent's Exhibit No. 229

This exhibit is entitled "Distribution of B. G. & M. Expense—Element "B," Country Trips, Selling Service only—On basis of B. G. & M. Element "B" Salaries (Number of Head)." This is a single sheet exhibit and shows the amounts representing travel and subsistence expense on country trips which was assigned to the species accounts on the basis of the number of accounts sales, exclusive of seconds and splits, and is here distributed to the rail and drive-in arrival accounts of each species on the basis of the distribution of the salary element of this B. G. and M. Element "B" account, which is discussed in connection with Exhibits Nos. 224–226. The remarks made concern-
1406 ing the salary feature of this account are also applicable to this expense feature with this additional comment. Mr. Bachmann classified as B. G. & M. expense the sum of $21,713.64, which he found on the books as having been taken out of B. G. & M. expenses and classified as administrative and general expenses in my set-up. While this amount represents the figures which Mr. Bachmann developed as payments made to the Exchange from the agencies' records, the sum is $6,633.11 less than the records of the Exchange shows to have been accrued as due from the same agencies during the year 1931. This expense consists of Exchange membership dues, of assessments to maintain the working funds of the Exchange for the purpose of defraying expenses of activities which are directed to the protection of the agencies' interests and the interests of the market as a whole, such as participating in transportation rate cases which might effect the

market welfare; in asserting the agencies' rights and protecting their interests in cases like the one at bar; in maintaining the Exchange market activities in general. I fail to see any justification for coloring this sum with any allusion to "Soliciting" in the sense that it relates to business getting and maintenance. The character of the expense would justify its classification as administrative and general expense. When setting up the bases of the costs as they appear in these exhibits, Mr. Bachmann's total B. G. & M. expense was taken and therefrom was deducted those items which were found to be in the nature of business protection expenses which were called B. G. & M. Element "A" in my distributions. The remainder of his total B. G. & M. expense were treated as Element "B," the fact having been overlooked that this balance contained this element of exchange dues and assessments. The bases on which it is distributed as a part of my B. G. & M. Element "B" does not affect the unit costs in any perceptible degree. If this $21,713.64 were considered to be B. G. & M. expense or if any substantial part of my Element "B" expense were considered to be of that character, it would be misleading and erroneous.

Respondent's Exhibit No. 230

This exhibit is entitled "Summary of Expenses (Adjusted) By General Accounts."

1407

Respondent's Exhibit No. 231

This exhibit is entitled "Reconciliation of Expenses with Government Cost Study—Showing Additions and Deductions by General Accounts." The maintenance expense on horses and horse equipment used by cattle salesmen is actually selling and buying expense for which reasons those items are so classified through the adjustments and appear in columns H to M, inclusive, on sheet 1 of this exhibit. The horse and saddle expense, including depreciation on horses, was included in yarding expense by the Government auditors. That expense is truly of a nature of buying and selling expense. Mr. Bachmann determined depreciation expense by the compound interest method. That method of computing the expense of depreciation may be quite all right in cases where the amounts collected for depreciation are placed in a funded reserve and the money put out at interest but no such condition obtains in the case of any of these market agencies. They have not been able to turn their depreciation expense into cash receipts and have no cash reserves set up to meet their losses through depreciation when it ultimately matures. The de-

preciation expense included in the costs which are contained in my exhibit was computed on a straight line method in an amount shown in column S of sheet 2 and the charges are based upon the depreciable values shown in the Government's appraisal of the property as at December 31, 1931. Mr. Bachmann applied the rates of 10 percent per annum to office furniture and equipment and 5 percent to office fixtures. My office depreciation expense is based on 5 percent per anum on office fixtures, 5 percent per annum on furniture and equipment, and 10 percent per annum on office machinery. The office depreciation expenses which have been taken into account is $9,785.90 as against $9,515.00 used by Mr. Bachmann. In his classification, Mr. Bachmann uses an account called "risk expenses" in which he has included accruals on fire insurance policies covering office furniture and fixtures. I have included such expenses in the office expenses and the amounts appear in column T of sheet 2. Mr. Bachmann included premiums on fidelity bonds in his account styled "risk expenses." I believe a more appropriate classification of this expense would be administrative and general expenses and that the most suitable basis available for its disposition to the several ac-
1408 counts would be the labor charges assigned to such accounts.

For that reason, it has been transferred from risk expense to administrative and general expense and the amounts appear in column B of sheet 2.

Respondent's Exhibit No. 232

The title of this exhibit is "Depreciation Accruals on Basis of Reproduction Cost New, Property Owned and Used, by Live Stock Commission Agencies, Kansas City Market, 1931."

Respondent's Exhibit No. 233

The title of this exhibit is entitled "Distribution of Risk Expenses (Including Sundry Insurance) to Arrival Accounts." This is a four-sheet exhibit and shows the depreciation of risk expense to species and subaccounts within each species account. On this exhibit these expenses are shown in two accounts, namely, "mortgage and theft" and "other risk expenses." The amount included in the Government cost study for mortgage and theft insurance premiums accrued is $8,916.30 for the 59 firms.

Respondent's Exhibits Nos. 234 and 235

Exhibit No. 234 is entitled "Reconciliation of Risk Expenses with Government Cost Study—Showing Additions, Deductions, and Eliminations." and Exhibit No. 235 is entitled "Reconcilia-

tion of Risk Expense with Government Cost Study—Showing Accounting for Difference." Exhibit No. 234 is a sheet showing the items which were deducted from the risk expense included by the Government in its cost aggregating $40,986.29. Included in the cost presented by these exhibits only $32,313.26 is included, the difference being set forth in detail in exhibit No. 235. Among the eliminations is a debit item of $352.66, representing loss on feed, freight, and so forth, which are extraneous to the cost of service furnished to market patrons, and $6,371.85 representing a loss on bad debts which can hardly be justified as an operating expense. Some of the items included in the Government risk expense total have been reclassified to other operating expense accounts. There is left $21,229.86, which has been disposed
1409 of in the costs appearing on exhibit No. 207 as other risk expense consisting of the following items:

Workmen's Compensation Insurance Premiums	$8,134.81
Public Liability Insurance Premiums	9,237.26
Error in Government figures on Public Liability premiums	23.41
Errors and adjustments	835.35
Forgery Insurance premiums, and other necessary insurance premiums paid	1,983.42
Loss on refused purchases, astrays, etc	1,015.62
Total	21,229.86

This amount is distributed and appears as the final item on Exhibit No. 233, and when conjoined with the mortgage and theft expense on that exhibit, the sum total of the risk expense as classified in this study is distributed on the final cost sheet, Exhibit No. 207, as the third item in the respective brackets in that exhibit. Other risk expenses are distributed to the species accounts on the basis of the total salaries distributed to such accounts.

Respondents' Exhibit 238

Respondents' Exhibit 238 is entitled "Mortgage and Theft Insurance."

Respondents' Exhibit 236

This exhibit is entitled "Public Liability Insurance." On this single sheet exhibit are shown the basis and the rate of accrual of public liability insurance premiums, which are based on the 1931 payroll in the same manner in which the assessment is made against the insured. The public liability insurance protection comes under the jurisdiction of both Kansas and Missouri since the hog yards are located for the major part in the state of Kansas. The 1931 Kansas premium rate was 40¢ per $100 of payroll. The Missouri premium rate was 72¢ per $100 of payroll. The payroll has been divided by assigning the hog payroll salary ex-

pense to the State of Kansas and the remainder of the hog payroll expense to the State of Missouri, the respective premium rates being applied to such amounts. The total expense is distributed to the species accounts on the basis of distributed payroll.

1410 Respondents' Exhibit 237

This exhibit is entitled "Workmen's Compensation Liability Insurance." This insurance premium also comes under the jurisdiction of both Kansas and Missouri. The premiums assessed to the assured are based on the payroll at the rate of 6¢ per $100 for office workers and $1.42 per $100 for yard workers in Missouri, and 6¢ per $100 for office workers and $1.10 per $100 payroll for yard workers in the State of Kansas. The salary and wage expenses have been divided as between office and yard workers in the respective states, and the total amount has been distributed on the basis of distributed labor expenses.

Respondents' Exhibit 239

This exhibit is entitled "Invested Capital—Summary; and Equivalent of Eight per Cent Annual Return Thereon."

For the 59 agencies, the total capital is shown as $746,487.75, on which the respondents claim they are entitled to a return of 8%, or $59,719.21. I have used the rate of 8% because it seemed to me that the hazard surrounding the capital invested in these enterprises is so great that a reasonable compensation to the investor for the risk assumed could not be less than 8% per annum. The actual fair and reasonable rate of return might be much greater. I have considered that the capital invested in these enterprises is in constant jeopardy. The business is highly competitive in all particulars and at all times. For unavoidable reasons, which are economic in their origin, the investment cannot be surrounded with safeguards and protections of the kind which may be erected around other businesses where 6% and 8% per annum have been held by the courts to represent a fair rate of return. The earnings of the business are subject to Federal regulation under conditions which make that regulation one of the principal hazards attending the security of the capital invested. This hazard consists principally in the fact that the livestock industry at this market, which, I understand, is the case at most if not all of the other markets, is without the equipment of facts and figures derived from its experience that may be effectually used in asserting and defending its own rights under this regulation. There are other uninsurable hazards, principal among

which are (1) the hazard attending the clearance of checks
1411 and drafts through banks widely dispersed throughout the country; (2) the hazard of loss and damage which may be suffered by livestock held in custody; (3) the hazard that the available volume of business may be so affected by Governmental policies advocating cooperative marketing that the agency may be deprived of opportunity to earn enough to pay operating expenses, must less a return on invested capital. All of these hazards attend the sum totals of capital invested, and for that reason I perceive no occasion for applying one rate to a certain part of the capital invested and a different rate to another part of the capital in measuring the fair amount of return to which the investor is entitled, as the Government witness has recommended should be done in this case.

Respondents' Exhibit 240

This exhibit is entitled "Invested Capital—Sound Value (Reproduction Cost New Less Depreciation) of Physical Property Owned and Used."

Respondents' Exhibit 241

This exhibit is entitled "Invested Capital—Investment in Materials and Supplies (Excluding Feed), as per Government Audits, Exhibits A and B."

Respondents' Exhibit 242

This exhibit is entitled "Invested Capital—Cash Working Capital for Operations."

Respondents' Exhibit 243

This exhibit is entitled "Invested Capital—Cash Working Capital for Sales and Purchase Transactions."

Respondents' Exhibit 244

This exhibit is entitled "Invested Capital—Investment in Methods and Practices Employed in Yard and Office." This exhibit is comprised of two sheets and relates to the reproductive cost value of the agencies' investment in that nonphysical property which is represented by the method and practices which are employed in the yard and office work. This exhibit rests upon the same basis as a similar exhibit contained in the record of the previous
1412 hearing, in so far as the same firms are involved. For

firms not covered by the original estimate of 1929, one similar to the one then made has been compiled and incorporated in this exhibit for the purpose of the present hearing.

Respondents' Exhibit 245

This exhibit is entitled "Commission Revenue, per head, by Firms, by Species, by Arrival Accounts—from Gross Revenue and Number of Head from P. & S. Exhibit, 1931." This single sheet exhibit is the transcript of information taken from Mr. Bachmann's cost study.

Respondents' Exhibit 246

This exhibit is entitled "Gross Commissions Earned, 1931—from P. & S. Exhibit, pages 42–45 inclusive."

Respondents' Exhibit 247

This exhibit is entitled "Number of Head by Firms, by Species, by Arrival Accounts, 1931—from P. & S. Exhibit, pages 65–68 inclusive."

Respondents' Exhibit 248

This exhibit is entitled "Relation of Tariff No. 3 Commission Revenue by Arrival Accounts (and Cattle by Weight Classes) to Gross Proceeds of Sales, 1931, for Fourteen Firms." This exhibit consists of three sheets, the third sheet of which shows the number of head by arrival accounts by weight classes for 14 firms compared with the total of 59 firms, showing that 14 firms handled approximately 30% of the volume of the 59 firms. On sheet 1 of this exhibit, the data respecting rail and drive-in consignments, respectively, appear; and on sheet 2, similar data for seconds and all consignments appear. The prime purpose in setting up this exhibit was to ascertain by arrival accounts the average gross sales proceeds per head for cattle and calves c mprised in the respective weight classes observed by Tariff No. 3, and the average gross proceeds per head for hogs and sheep and, incidentally, to show the relationship of the commission revenue produced by Tariff No. 3 to the gross proceeds derived from the sale of
1413 the animals handled in each classification. It will be noted from the upper bracket of the tabulation of sheet No. 1 that columns B to E show the commission revenue under Tariff No. 3 for each of the 14 firms, and columns F to I inclusive, the proceeds of sale by weight classes, all having to do with the species cattle. In columns J to M inclusive appears the same

information for hogs and sheep but it is not broken down to weight classes in the case of hogs, and weight classifications are not observed by the tariff in the case of sheep. The weight class subdivisions for hogs are not shown for the reason that the tabulations disclose that a number of animals in hog weight classification, being pigs weighing 130 pounds or less, were very few in number. In columns N to Q respectively are shown the percentage relationship of the revenue by weight classes to the gross proceeds by weight classes for the species cattle. The same information for hogs and sheep is shown in columns R and S respectively. This exhibit is limited to 14 firms for reasons of time and expense. An analysis of gross proceeds and commissions by weight classes for the species of cattle and calves was made for a total of 46 firms, as set forth in Exhibit 249, but this analysis did not respect the arrival accounts. When it was requested that these data be compiled by arrival accounts for all three species, it was necessary to have comptometer operators resort to tabulating machine tapes and break down the species weight class totals as to commissions, gross proceeds, and number of head to the arrival account totals and balance them out. Time limitations made it impossible to comprehend more than 14 firms in the study.

After this exhibit was completed it was discovered that cattle commission revenue per head, per Tariff No. 3, shown on the bottom line of each section of this exhibit in columns B, C, and D only, was incorrect, which is to say by weight classes, for the reason that these particular averages embrace an irregular amount of extra charges as well as the tariff head charge, and weight class No. 1 and weight class No. 2 contain a disproportionate amount of such extra charges as compared with weight class No. 3. These two weight classes picked up all the extra charges save when the account sale covered weight class 3 only. These figures have been corrected and are set forth on Exhibit 253, on which at line 10–a may be found the average head charges for
1414 each weight class, at line 10–b the ratable proportion of the extra charges pertaining to each arrival account, and at line 10–c the average total charge per head, combining both the headage charge and the weight classes' ratable proportion of the extra charges.

Respondents' Exhibit 249

This exhibit is entitled "Average Gross Proceeds per Head by Weight Classes per Tariff No. 3 by Firms—Cattle and Calves only."

Respondents' Exhibit 250

This exhibit is entitled "Relation of Selling Commission Revenue under Prevailing Tariff No. 3 to Gross Proceeds of Sales by Species, Year 1931, for Sixteen Firms."

Respondents' Exhibit No. 251

This exhibit is entitled "Comparison of Actual Revenue Earned in 1931 under Tariff No. 2 with Revenue Which Would have been Earned with Same Volume Had Tariff No. 3 Been in Effect—Selling Service."

For selling service only, and using headage handled during the year 1931 as the basis for comparison, the commission revenue yield of Tariff No. 3 is less than the yield of Tariff No. 2 by 7.6 percent in the case of cattle and calves, 16.6 percent in the case of hogs, 10 percent in the case of sheep, and 9.3 percent for all three species, according to the results which are set forth in this exhibit. The study covered a volume equivalent to 99 percent of cattle and calves, 92 percent of hogs, and 97 percent of sheep sold on the market during 1931 by 59 firms, 57 of which are covered by this revenue study. This exhibit consists of nine sheets. It shows the results for each agency individually and for the 57 of them collectively, for cattle, hogs, and sheep, respectively, subdivided as between drive-ins, rail mixed carloads, rail straight carloads, and seconds. All turn-over account sales, where carloads were consigned to one agency with instructions to turn a portion of the headage over to another agency, received special consideration. There were not enough of them and they did not cover a volume sufficient to perceptibly affect the ultimate results. No difficulty in classification was experienced, as the account sale was rendered by the consignee agency.

1415 The analysis and the recapitulation of the results constituted a sizable task which involved several operations. The first step taken was to analyze the accounts sales. The second step was to transcribe the information developed by this analysis to punch cards, so that the data could be sorted for classifications and summarized. The third step was to group the individual entries which had been sorted, classified, and listed, so as to permit of the application of the provisions of Tariff No. 3, and the fourth was to make the application of the provisions of Tariff No. 3.

Respondents' Exhibits Nos. 251–A and 251–B

Respondents' Exhibit No. 251–A is a sample of the account sales analysis form which was used in drawing off the material

which was transcribed to punch cards in connection with the analysis of the 1931 account sales.

Respondents' Exhibit No. 252

This exhibit is entitled "Tariff No. 3 Commission Revenue on Relative Basis, Respondents' Service Costs, Including Return on Investment, and Profit or Loss, for 59 Firms Collectively—1931." The resulting profit or loss which would have resulted had Tariff No. 3 been in effect during 1931 is shown on line 6. It may be noted from the last column from the right, which is column U, that on this basis the total loss for all species during the year 1931 would have been $356,347.37.

Line No. 7 of this exhibit shows the profit or loss resulting on the basis of Tariff No. 2 revenue. For the 59 firms on that basis the loss is shown as $219,586.02.

Respondents' Exhibit No. 253

This exhibit is entitled "Apportionment of Arrival Account Costs (Per Respondents' Exhibit No. 207) to Weight Classes—Cattle and Calves—Selling Service Only."

The purpose of this exhibit is to show the relationship of the aggregate cost figures for the several cattle arrival accounts apportioned to the weight classes on a proceeds basis, and the average revenue per head produced by Tariff No. 3. For rail arrivals, weight class 1, the average cost per head in round numbers is 23 cents and the commissions 29 cents; for weight class No. 2, cost 48 cents, commission revenue 51 cents; for
1416 weight class No. 3, cost 83 cents, commission 67 cents; for total rail arrivals, cost 64 cents, revenue 57 cents.

For drive-in arrivals, the average cost for weight class 1 is 33 cents and the revenue 34 cents; weight class 2, cost 91 cents, revenue 67 cents; weight class 3, cost $1.49, revenue 72 cents; all drive-ins, cost 93 cents, revenue 59 cents.

For seconds by weight classes the comparisons are as follows: Weight class 1, cost 21 cents, revenue 21 cents; weight class 2, cost 45 cents, revenue 36 cents; weight class 3, cost 65 cents, revenue 37 cents; all seconds, cost 47 cents, revenue 33 cents.

For all consignments, the comparisons are: weight class 1, cost 26 cents, revenue 30 cents; weight class 2, cost 53 cents, revenue 52 cents; weight class 3, cost 88 cents, revenue 66 cents; all arrivals, all weight classes, cost 67 cents, revenue 56 cents.

Respondents' Exhibit No. 254

This exhibit consists of two sheets and is entitled "Cattle and Calves Only—Analysis of Commission Revenue Resulting from

the Application of Tariff No. 3 to 1931 Volume by Arrival Accounts, Weight Classes, and Elements of Charge (from Tapes of 14 Firms.)"

This exhibit shows that the extra charges are 2.52 percent of the total commission charges for these 14 firms, and the headage charges represent 97.48 percent of the total commissions derived by the application of Tariff No. 3, if that tariff had been in effect during the year 1931. I utilized the gross proceeds method in the distribution between weight classes. The effect of the utilization of that method of distribution as to weight class 1 of cattle delivered by rail is to indicate a cost of 22.6 cents per head in respect to that class, and a revenue of 27.6 cents per head on a headage basis, or a total revenue of 29 cents per head when the extra service charges are spread between the different weight classes.

In respect to weight class 2, the cost was 47.95 cents per head as against a total revenue, including service charges, of 51.04 cents per head, and as to weight class 3, 82.67 cents per head as cost against a total revenue, including extra service charges, of 66.84 cents per head.

As respects drive-ins, the cost was 33.05 cents per head in weight class 1, compared with a revenue of 34.37 cents
1417 per head, and for weight class 2 the cost was 90.58 cents per head and the revenue 66.76 cents per head.

In respect to weight class 3 of drive-ins the cost was $1.4879 per head against a revenue of 72.35 cents per head. Weight class 3 for seconds showed a cost of 64.71 cents per head and a revenue of 36.55 cents per head.

There is nothing new about the use of arbitrary bases for apportionments in cost accounting practice. The word "arbitrary" may not be construed as being arbitrary in the sense that they are unreasonable and without a sound recommendation. We do not know and so far as my own experience is concerned I can say there has been no way to find out whether these bases that I have referred to as being arbitrary are actually reasonable or unreasonable. We don't know whether they approximate the fact or whether they really sweep rather wide of the fact. That is due to the condition that the operating costs of this industry have never been put on a basis, so far as I know, certainly not at this market, which gives you the accumulative benefit of an analyzed experience. As a consequence, I feel that wherever it is necessary for us to use methods of proration upon bases such as the sum total of heads and drafts we can't be sure that the apportionments made on these bases are reliable. I have used the word "cost" in my analysis in this case in the sense that it

represents as nearly as we can ascertain it the total present values expressed in dollars which these agencies sacrifice in providing the service to the public. That cost is not representative wholly of cash moneys paid out, but it is representative of a figure applicable to the year 1931 which would result if all these values sacrificed or consumed in providing this service were reduced to a cash basis on the terms and under the conditions under which such values have been reckoned. In arriving at that amount I have taken at their face value the owners' services as they have been appraised by the committee. I feel that this aggregate cost is a figure upon which we may depend without any great danger of being seriously misled. When the cost is broken down to the three species, we get out where the ice under our feet is a little bit thinner, for the reason that the distribution of the salary and wages to the species accounts is based entirely on estimates made by the respective firms as to the percentage of the time of those workers who were engaged in servicing two or more of these species. These agencies have not kept
1418 a daily record of their personal performance. No record which I know of has been kept by any agency which affords an historical record of the manner in which the various employees and owners spend their time from day to day with respect to its devotion to the several species which they may handle in their business. The time of some of these men is devoted exclusively to one species and there is enough of this 100 percent species distribution to warrant us in having a limited amount of confidence in the species cost. That cost is not made up entirely of salary and wages, but the manner in which the expense element, other than salaries and wages, is disposed of *in* such as not to seriously weaken this limited confidence which I have mentioned as being warranted in the case of the species cost. When we go into the third step of this performance and undertake to further break down and distribute the aggregate species total cost to the four selling arrival accounts, and subdivide it as between selling service and buying service, we are again confronted with the fact that we have only somebody else's opinion as a basis for that distribution of salaries and wages expense. The buying and selling services are generally handled in common by the same individual. The selling service predominates and requires the major part of the time, but from the nature of the buying service it is my estimation that any estimate a man may make of the subdivision of his time, as it was devoted to selling and buying services, is going to be a pure guess. When we undertake to break the selling element of this cost down to the three arrival accounts, we are again confronted with a lack of basic information which is based upon actualities, which en-

ables us to distribute that expense in a way which inspires our confidence. It is my opinion that we cannot safely rely on the figures which I have set forth or upon those which Mr. Bachmann has set forth as being truly indicative of the actual cost of handling the shipments in those different accounts. I do not mean to make a wholesale disparagement of these efforts. I think the information is informative in a degree despite its infirmities. If the figures of either myself or Mr. Bachmann were put into the hands of someone who was not familiar with their frailties and he proceeded to use them as though they were valid and possessed of all integrity, a great deal of damage might result from their use in that fashion. We have taken these costs only as
1419 far as the arrival account. Mr. Bachmann has gone the full route and broken the arrival account cost down to a single and plural ownership, straight and mixed, rail shipments, and so forth.

A comparison of Mr. Bachmann's differential study and my Exhibit No. 206 will show that there is a marked disparity in the unit costs of individual firms as they relate to the same account. We know that the differences in the volume handled, in its consist, in the size of the consignment, in the character of the animals contained in those consignments which regulate the number of drafts into which they have to be partitioned, and in the methods of operation employed by the respective firms, all tend to cause a variation in the unit costs. It is highly important that we should hark back to the bases which underlie the derivation of these costs and remember the several stages of estimating arbitrarily, prorating, and this and that and the other thing that they went through before they arrived in the form in which we propose to use them. It is axiomatic in the cost finding business that the integrity of unit costs which have as their constituents several different elements of expense that the expense classification must be uniform and standardized before there can be expected to be found uniformity in the aggregate costs expressed on a unit basis. In this industry we have no standard classification of expense accounts.

A serious disadvantage in Mr. Bachmann's figures is that there is no uniform basis for the most important element of the cost, which is the salary and wages expense. I believe that Mr. Bachmann has utilized every particle of information that was available to him in attempting to set forth the costs computed according to the methods and practices which he has adopted. I am sure that we have undertaken to do the same thing. The fault is in the information and material which the compiler has to work with. The information has never been recorded or assembled or classified with the prime object that

the material would be used to fabricate unit costs for rate-making purposes. There are other things beside cost which enter into the fixing of just and reasonable rates, but among all the things that are to be considered it seems to me that that factor of cost is one of the most important, because a rate can hardly be said to be just and reasonable which is not at least compensatory, if not within its own self, at least compensatory when
1420 its operation is conjoined with the operation of other rates concurrently applied and reciprocal in their relationship, that the joint result of these rates should be at least compensatory. In many industries besides this one we find oftentimes a very considerable proportion of the aggregate cost of doing business to consist of what accountants call stand by expense. It is the expense which emanates from standing by, being ready, able, and willing to serve. We have that sort of expense in considerable proportions in this case. The rail cattle business occupies not exclusive but inclusively, the first two days of the market week and very little of the remaining days of the market week. The drive in business, on the other hand, patronizes the market the first two days of the week as well as the other days of the week, with the exception of Sunday. In the two studies which I have made of the costs on this market, it has not been possible to segregate or deal intelligently with this stand by time and the stand by expense which seems to me to be a very important factor in this cost study. So far as my understanding goes respecting Mr. Bachmann's study, he has not been able to comprehend that situation either. These matters are by no means a complete inventory of the problems and difficulties which attend this cost-finding subject in this particular instance. My own conclusions are that Exhibit No. 252 which shows a comparison of the costs and the revenue produced by Tariff No. 3 and Tariff No. 2, respectively, is substantially correct. I think that the loss or gain which would develop with respect to each of the three species by combining the total selling and buying services would be an approximately correct appraisement of the relation of any profit or loss to the gross revenues for those species, but as respects the showing in this exhibit for the individual arrival accounts under each species I would not be so certain that the species loss or gain, as the case may be, were attributable to the arrival accounts in exactly the same proportion as the figures shown on this exhibit would indicate. In arriving at this total aggregate loss, as shown on Exhibit No. 252, I did not include as expenses of operations the amounts representative of bad debts, loss on loans, and otherwise.

I endeavored to compare the cost of the service with the revenue earned for performing that service, and purposely excluded from consideration all debits or credits that were not germane to the operating costs and operating revenues.

1421 I paid no attention to non insurable hazards in respect to the accrual or estimate of any loss which might arise therefrom. These figures of mine are not an exposition of the complete cost of doing business. They are an exposition of those several elements of that cost which were in this instance measurable and obtainable. There are unquestionably some other elements of cost which are not included in Mr. Bachmann's statement of costs or mine. Some of these expenses are indicated by losses which have been charged off to profit and loss and being the balancing of accounts, I have not considered properly includable in my cost because they are not a correct measure or even indication of the proper degree of cost of bearing these hazards. They are merely the indication of the maturity of certain of these hazards representing or calling for a direct money outlay. They are not a correct measure of the hazard itself. It would be rather deceptive and perhaps misinformative to include them in cost and then say that this cost was complete.

If the loan business were to be considered as part and parcel of the livestock commission agency's service, its incorporation in the service category would change the Secretary's figure. I do not know whether it would increase or decrease because you would have to consider the revenues or profits from that service as well as the cost. Both sides of that transaction would have to be considered.

It is considered as an extraneous operation and omitted from consideration entirely in my total aggregate cost and revenue resulting deficit. Inclusion of the loan business would bring about dissimilarities and disparities in the relative situation of individual agencies. Some of them do not engage in the loan business. In my 1929 study, I included insurance accruals relating to such liability as may be imposed upon the Respondents' arising out of losses of livestock while the livestock was in their custody. The level of the rates was so high as to seem to me that the rate quoted was not quite fair to use in determining the cost in rate-making purposes. Since it seemed to be the case that it was cheaper for the agencies to carry their own insurance, that it was to hire the insurance companies to carry it for them at these rates, I left that out. The only item which I have included as representative of what might be termed "going

1422 concern value or a return thereon" is the return provided for on an 8 percent basis on the investment in methods and practices employed in yard and office as estimated by me.

The hazard of personal injury to owners is included because the insurance premiums, or the premiums for that insurance protection are based upon the salary and wages of the ordinary pay roll. It is not a pay roll here because it includes appraised salaries of the owners. The basis for our workman's compensation accruals is the combination pay roll of owners and non-owners. The owners being on an appraised basis is my understanding of the correct measure of that cost. As we get away from the aggregate cost of all services and proceed toward the farthest refinement of that cost, I think the reliability of the figures decreases.

I made no attempt to reaudit the books of any of these Respondents or revise to any extent the figures represented by the exhibits introduced by the Government under the Government's general Exhibit No. 114. Some of the Respondents who are individual properietors who own their own automobiles frequently, while keeping an accurate record of the transactions of their customers, fail to keep adequate books and records as to their expenditures, treating them in fact as personal expenditures. That makes it impossible for the auditor to get at results which he could be certain were complete facts. Presumably that would iron itself out in the total of all the audits and the importance of the omissions would be less and less.

The quirk in the cattle unit cost on Firm No. 16 is due to the erroneous apportionment of expenses which were distributed on the basis of drafts, where the relative number of drafts had an effect upon the apportionment bases. Such distributions are erroneous for the reason that under cattle drive ins, the number of drafts used was 448, whereas the correct number of drafts was 1,448. There was a typographical error in Mr. Bachmann's statistics, which was not discovered until after all the costs were set up.

The drive in business for Firm No. 16 got one third of the charge that it should have had, and the portion which it escaped went into the rail account and seconds account.

It was the forepart of August that I came in Kansas City instead of the forepart of September. Firm No. 8, one of the agencies which is a member of the Exchange was not included in my cost study.

1423 CROSS-EXAMINATION

Exhibits Nos. 206 to 254 are based upon and represent mathematical computations from the so-called blue audits which have been put in evidence under the general number of Government Exhibit No. 114, the only exception to the statement being that

these exhibits comprehended the owner's salaries on an appraised basis. The exhibits relating to the analysis of the account sales were not taken from the blue audits.

Certain exhibits numbered between 206 and 247, which are the cost exhibits, particularly those relating to invested capital, do not rest on the blue audits. The development of invested capital rests, in part, on the data taken from the blue audits and in part on independent developments extraneous to the blue audits. That subject is dealt with on exhibits Nos. 239 to 244.

It is intended that the figures in Column C of Exhibit No. 239, having to do with Exchange memberships, should be the same as in Mr. Bachmann's cost study. The same is true of the — for furniture and fixtures and equipment in the Column D. Working capital under Column G is intended to portray the working capital employed on the form of either cash or established credit to finance the sales and purchases transactions during 1931, but the amounts shown in this Column G are estimated amounts.

The value of methods and practices appearing in Column H in Exhibit No. 239 was taken directly from my 1929 study. There are a couple of new firms appearing here which were not comprehended in the 1929 study and the figures have been supplied for those firms, and the figures provided in the 1929 study for the firms that are not covered by this study have been left out. Everything that I had to say at the former hearing with respect to the value of methods and practices in my 1929 study applies with equal force to the same thing in my 1931 study. While there has been some change in the general level of costs of things since 1929, it does not seem to me that there has been any perceptible difference in the general level of costs of work required to produce a thing like this since 1929.

I am quite sure that none of these methods or practices are copyrighted or patented. In this particular case these firms are common users of a very extensive and intricate piece of
1424 property. They use it conjointly and unless the rate payer is to be burdened with an avoidable expense, and perhaps other charges as well, that joint use must be on an efficient basis. In the control and administration and handling of this business, like any other business, there are many ways and means and methods that may be employed in handling it. They all cost money. As experience builds up and we learn of certain ways and certain methods that are most efficacious in getting results, that are most economic from a standpoint of expense, those ways, means, and methods become tested and proven and standardized and finally adopted. They have a value attaching

to them which is a part of the property right possessed by the user of them and the possessor of them. They are not quite in the same analogy as the method we would use in dressing ourselves, putting on our shoes first or last as the case may be. These are special methods and processes, and without them it seems to me quite obvious that anyone or all of these agencies would merely have an opportunity before it to do business, an aggregation of individuals to perform the manual operations, but still it would not have an organized business. A firm would have no means of controlling that business and certainly without these methods and practices which they have proven and tested and finally adopted, it would cost more to handle the business than otherwise.

In my work I may go into a business and make a suggestions for improvements in methods of doing business which greatly decrease the cost of doing business. There is a value attaching to this improved methods, which manifests itself in a reduced cost of doing business. The basis on which the estimate was made comprehended the firms collectively. It would not be possible as a practical matter to set up a system of yard practices and methods for an individual firm without being influenced or guided, or at least having analyzed and obtained the workings of the methods and practices used by other firms in which this particular set of methods and practices would have to mesh, and they would have to cooperate in making this estimate.

The total sum approximated something like $50,000.00 which was apportioned over the individual firms on the basis of their volume or the extent to which they participated in this aggregate reproductive cost expenditure. There arises here the ques-
1425 tion of the extent to which the value may enure to these different firms in the event their participation in the joint use of this thing should decline. It might not be quite so valuable if it could not be used to its capacity, but I have not undertaken to make any adjustments on that account. I think it would be one of the factors, probably not treated as an entity and specifically evaluated upon which they could realize in the event they sold their business. If Firm No. 1 sold out to Firm No. 4, I am not sure that Firm No. 4 would be willing to pay Firm No. 1 something for the methods and practices, because what he would be willing to pay would be determined perhaps by the conditions under which the sale was made or the purchases obtained. This value which I have undertaken to find here is not what we might call a commercial or bargain sale value. It is a means adopted in the attempt to measure the non physical assets which this particular firm possessed and used during the year 1931 or during the year 1929, and the value is measured, not by what it would

bring on the open market under conditions of a normal bargain and sale, but rather what it would cost to reproduce it if you did not have it and yet found yourself obliged to supply yourself with it.

In mentioning the sum of approximately $50,000.00 I had in mind the yards methods and practices which are not inclusive of other similar items which attach to the office. The balance of the value attached to this non physical property shown in Column H of Exhibit No. 239 was arrived at by considering the circumstances of the individual firms and involves no apportionment between firms. The figures in Column H of Exhibit 239 cover yard and office methods and practices. I did not use the proceeds from the sale of animals as a basis for the distribution of any of my costs in my 1929 study.

I would say that the sales value of the animal does not relate itself in any way at all to the cost of the market agencies in selling them.

It is to be understood that gross proceeds or sales value has not been used in any general way in distributing the costs set forth in these exhibits except as a basis for an adjustment as between the selling arrival account cost and also on Exhibit No. 253 where a very special use is made of it. In the general cost study, gross proceeds value does not appear as a distribution factor, except in
connection with the shift of costs between the arrival ac-
1426 count within a species out of respect to the relative ability
to pay as measured by gross proceeds. It does not enter at all in my distribution of costs as between species.

The bracket appearing at the bottom of the last sheet, which would be No. 9 of Exhibit 207, shows the unit cost per head adjusted, the unit cost per head unadjusted, and the affect of the adjustment all expressed in unit cost per head. The effect—that adjustment was to take 13.74 cents per head out of drive ins and 16.23 cents per head out of all seconds and 12.79 cents per head out of split consignments with the result of adding 3.71 cents per head to the rail rate. The effect on the head rate on rail cattle is much less than the counter effect on the credit of the head rate of drive ins, seconds, and splits, because there are a great many more head of rail cattle. In that way it would show a greater proportionate cost of selling rail cattle then is actually the case, assuming that the cost figures are actual cost.

When an accountant is faced with the necessity of making an arbitrary distribution, he is compelled to use judgment in an effort to find a basis or bases which will, in his opinion, as nearly reflect cost producing factors as is possible under the circumstances. There are certain logical checks upon the kind of judgment that is used. There is a certain judicial discretion that must attach

to a cost accountant's work unquestionably. Quite often the cost accountant must obtain that information from people actually engaged in the business which is being studied.

I think the office work in a commission firm centers around the consignment. The consignment represents an owner, the correspondence is with the owner, and there are various other reasons why it centers around the consignment.

To some extent the amount of office work, per consignment, will be effected by the number of drafts in that consignment, perhaps not in exactly the same ratio as the number of drafts may increase in one case and decrease in the other from a general average. It does not mean that a consignment with three drafts is going to cost three times as much to handle in the office as a consignment of one draft. Where consignments have five drafts per consignment as against 1.8 drafts or drive ins and 2.4 on seconds. When office salaries and office expenses are distributed to arrival accounts on the basis of drafts, that naturally tends to
1427 throw more cost to the rail consignments than it would to drive in consignments. I think it is the best available basis for putting the species cost down to the arrival accounts.

I know nothing about the method employed by the Secretary of Agriculture in the so-called Omaha case for the purpose of ascertaining the reasonable cost of owners' salaries.

"Q. Well, the method employed, as I understand it, Mr. Roberts, to ascertain or determine the cost of the services of the owners in performing the services for which the commissions are charged, was basically in principle that if an owner engaged in the selling of cattle, for instance, his services in that respect were worth the same as what he would have to pay on the bargain basis to employ a competent cattle salesman. Is that owner also engaged in the management of the business, that is a proportion of his time he had allocated or distributed to management, then, the value of that portion should be determined on the basis of what was actually being paid to managers in that same type of business at the same place, and similarly as to any other service that portion of his time might be devoted to, and then when the rates were determined finally they exceeded the aggregate of the cost. there being a margin between the aggregate cost, speaking of unit costs, now, and the prescribed rate which margin might cover the so-called entrepreneur's profit, what would be your criticism, if any, of that method of determining the value of the owners' services?"

My understanding of just what has been said enables me to say that my personal objections to such a procedure would be that it is wholly inappropos to the issue at bar. The effect of it would be to undertake to regulate the level of the rates in a way which

would compensate the owner in a measure which was arbitrarily determined and I would say superficially determined. My belief is that it is impossible for the Secretary or anyone else to arrive at a reasonably correct approximation of a worker's service value when that work' is an owner, manager, or executive of the business, we might say the moving spirit of that business by integrating the amounts which are comparable with sums paid for service rendered by another which is in some part and perhaps only in a very small part similar to part of the services rendered by the owner. My observation is that the chief executive or
1428 the owner or the manager of the business, his service value to that business is not measured nor measurably by comparison of what it costs to get someone else to do the same physical labor that he might perform or what it would cost to employ several individuals perhaps to perform different kinds of physical labor which he might perform. The chief value of an executive to the business or of the entrepreneur is his ability to obtain business by virtue of his standing and his reputation and his contacts and his experience and all of these attributes which are inherent in the man who commonly is head of the business, and to obtain an opportunity to serve others at a profit. In the livestock business, one of the most expensive things is the procurement and retention of a volume of business. I fail to perceive wherein the process described there would be any evaluation of the faculty or the ability which the owner had to attract, procure, and to retain a volume of business. The owner or coowner is not only the moving spirit of the enterprise, but he personally rendered a service which perhaps could or could not have been replaced by another. In the event he was unable to render this service, there would have perhaps been no opportunity to have rendered such service if somebody else were substituted for him, because the opportunity to render that service was created by the confidence that his customers had in him personally, especially because of that feature of personal service worth, not human value, as I understand it, and if these appraisal figures had been offered to me as human values, I would have rejected them, but these values, as I understand it, have issued from the appraised values of personal services rendered. It seems to me that it would be impossible in almost any case to arrive at such a value attached to a particular individual wholly by a process of considering what you could go out and hire a man for who would sell an equal number of head of cattle in a given period of time or who would yard an equivalent number of cattle in a given period of time, and attempt to arrive at the value of that man's services in that fashion, because even though you might find some individual who was on a salary basis that you could accept his

salary as a criterion who handled the same number of cattle, perhaps was able to sell them at prices equally as favor-
1429 able, you would still be confronted with the probability or at least the possibility that if you substituted these men one for the other, the man substituted for the owner whose services you were seeking to appraise would not have the opportunity to serve the same customers that that man would have, which would completely alter your situation. In measuring the ability of these owners to attract business to their firms, and the value of their personal contacts, I would pay a great deal of attention to their record of past performance in that particular. I would not say that there is no process of measuring it in dollars and cents. If we had adequate records, I think it would be merely a statistical process to determine the average cost of attracting units of business. Unfortunately, we do not have the records.

In case an owner did the yarding, I would have to put it up to somebody else to determine for me what this man's services were worth. If he had no salary, there is nothing in the books to indicate the extent of the cost value of his services and I would be helpless. That is the condition I found myself in regard to these so called owner workers. I think it would be reasonable to say that for the function of yarding alone that man's services were worth what the firm could employ an equally competent yardman for, at whatever value might be attached to that man's entire services. I accepted the appraised values of owners' services without going behind them. It is true, as my exhibits here show, that there is a variation in the average gross proceeds per head for animals of the same species and animals in the same species and in the different arrival accounts of the various firms. These variations are generally not radical. There are differences in the per head value that run as high as 12 or 15 per cent in the case of cattle. It is quite possible that a particular patron may sell some fat steers at a relatively high price, and yet that price be less than the cost of production to him. It might be that a patron may have sold some inferior cattle at a very small price, and yet that would represent a good profit over what the cattle cost him. That is why "as measured by gross proceeds" is tacked onto the end of it there.

It seems to me that the introduction of the gross proceeds factor in my cost study has some relation to the reasonableness of the higher rates being on the heavier animals, if we are willing to concede that the ability to pay as a principle of rate mak-
1430 ing is properly to be recognized in a case like this. Our studies of the 1931 accounts sales have indicated that the head value of the animals sold increased progressively from weight class 1 to 3. In the case of cattle the average for 46 firms

shows the average head value for class 1 cattle and calves would be $15.95 per head; weight class No. 2, $35.22 per head; and weight class No. 3, $59.57 per head. I can not say that I know of any other reason for placing a higher rate on the heavier animals. There has been a contention on the part of some of the operators that the more valuable animals are sold by the more experienced and generally higher paid salesmen. I am not personally able to say whether the more valuable time is spent on the animals having a higher market head value or not. I have been told that there are cases where heavier animals are not the more valuable.

As to whether the rates should be directly related to value, the situation is a little bit compiicated. In the case of cattle we have about 85 percent of our volume that arrives by rail, 14 percent is drive ins, and about one percent is seconds. If any one or any two of these subdivisions of the total volume were eliminated, the remaining subdivision would have a tremendous cost to pay if it continued to patronize the market enjoying anything like market facilities equal to those maintained at the present time. Their interest in maintaining a market condition precedent to which is to defray the expenses incident to maintaining that market is a common problem. It is a common responsibility and their benefits are pretty much on the same relative level. We had that situation in the back of our minds and then approached this matter of the principle of the ability to pay out of a sort of a maze of difficulty that we were seeking to extricate ourselves from, and I believe that the concept of the problems are somewhat different than if we just approached it as a matter involving only ability to pay, leaving service costs and leaving joint responsibility and all that sort of thing out of the picture. What I have been able to learn about the business rather encourages me to believe that the successful way to make livestock commission rates and the equitable way would be to put them on a percentage basis, but there are no doubt many good reasons why that should not be done. The value of the service rendered and the ability to pay for it are one side of the equation in making rates, and on the other is the cost of the service furnished. If we ascertain our costs
1431 here, we would probably find that while there might be some greater burden resting upon the more valuable animals, because of the fact that their sale was entrusted to the more experienced and higher paid men, we have spent a little more time per head on them than might be done on less valuable animals sold by more inexperienced men. Even if that refinement were made in the cost, the chances are that we would still find that our costs suggested rates which were perhaps impracticable for application to the different arrival accounts. The

drive in business is of such quality that it would probably be unable to successfully bear the full cost of the service furnished it, if we were able to arrive at those costs with the most convincing accuracy. Assuming that that is true, and that the traffic could not move under rates which were confiscatory and that the traffic was withdrawn from the market entirely it would throw the entire burden presently borne by the drive in business upon the other business at the market. The depression and the things that go with it have led me to believe that they were probably in what is commonly called a vicious circle about those rates.

The volume has fallen off, and with the lesser volume we have a greater unit cost, and perhaps the more we charge for the service on a per head basis the less volume we will have. In a commercial industry when a firm gets into that sort of a mess it ofttimes has to make an initial sacrifice in the hope of making an ultimate gain. They have got to do something to build this volume back up, because we cannot depend on the level of the rates alone to derive profit from the business. The margin of profit in a rate does not by any means determine the profits derived from the business. It is the number of times that that part of the rate is turned over that measures the success of the business from a pecuniary standpoint.

If the rates were adjusted with respect to the apparent ability to pay, and if the burden of the service rates on the volume with respect to its ability to bear it, without any particular hardship on one class of business or the other, it would perhaps permit the revenue gained to be sufficient to enable the business to be carried on to afford a reasonable compensation to the workers and to the investment employed, and might successfully build up the volume to the point where the stringency would be removed,

and in the meantime the phenomenon resulting from the
1432 change in the rates was regarded and studied, and if we proceeded to get our house in order as respects account keeping in another year or two we might be able to get something pretty sound out of these studies. The costs perhaps give a pretty general indication of the relative level of the service costs and the rates. They serve to locate to the species in a fairly dependable way where the greatest losses may be or where the profits, if any, may be earned at the present time. Further than that I do not know just how helpful they would be to me if I had to start out to make these rates.

If the expense could not be reduced in proportion to the sacrifice of the drive in volume, even then revenue is derived out of the drive in volume and goes in exactly that amount to decrease what would otherwise be operating losses. We are face to face

with the principle that I have tried to identify here of recognizing in the apparent ability to pay the fact that we have drive ins here whose costs are disproportionately high as compared with rail arrivals. If the effect of burdening them with the rate predicated with due regard to that cost would so discourage that business that the market would be deprived of it, the rail arrivals would certainly not be benefited by such an outcome as that, because the expense that the drive ins now takes care of through such revenues as they produce would fall directly on the rail business. If the reverse situation should happen, the drive in business would be pulverized by the weight of expenses that would fall on it.

Wherever I used drafts in these exhibits comprising my cost study they were taken from Mr. Bachmann's computation of drafts. The rates on these several insurance accruals shown on exhibit 234 were supplied me by Mr. Gage in 1929, who obtained them from representatives of the local insurance companies which carried the insurance that were then carried by the agencies. Their applicability was verified or the rates were changed as may be proper to fit the 1931 conditions. Mr. Stebbins, the secretary of the livestock exchange, was good enough to make that verification for us and advise us of the results. I understood he consulted the same sources from which the information was obtained in 1929.

It would be practicable and it seems to me it would be highly desirable that the market agencies should be supplied with a standardized system of account keeping through which
1433 their operating expenses would be distributed, and that they should be required in so far as that is feasible to record on their books of account all expenses which are appurtenant to their market agency operations. This chart of accounts should be designed with the object of yielding the information that would be used, if needed, for cost finding purposes. Along with this chart of accounts they should also be required if that were feasible to keep a record of their volume so that having determined the cost of functions of work or components of service you would have available the units of performance covered by that service. There might be very practical difficulties encountered in introducing it into use.

I think one of the principal advantages would be that such a system would disclose in what services money was being made and in what services it was being lost. It would greatly aid the Secretary in administering the law and it would provide the agencies with those facts and figures which could be used by them in defense of their own interests.

If we undertook to keep our time and expenses distributed in a way so that we would arrive at a cost of each of the services rated in Tariff No. 2, I think we would be breaking those costs down beyond the limit of practicality.

The industry is not accustomed to account keeping and it knows nothing whatever about the principles of cost finding. It would be necessary to start out with a relatively simple plan which might be expanded and refined and developed after a year or so as they made progress in the art of keeping accounts and making distributions. It is my thought that the accounts so kept would be either directly related or susceptible of being adapted to the tariff provisions. I would say that one system of accounts could probably be applied at all markets because the principles which underlie the market operations of these agencies are identical.

(Whereupon witness asked that the caption of column E of Exhibit No. 234 be changed to show "Schedule 12–D" instead of "Schedule 12–B.").

The salaries and wages should be on the basis of service value rather than on some other basis in the event they were to be used for rate making purposes. 'In arriving at costs which are
1434 in their nature composite costs of a number of businesses, it is necessary with any computation of salaries and wage expense for each of those businesses to have some uniform line, in the sense that the salaries and wages covered the same sort of a consideration received. For example, a supernumerary pensioner who renders no service, but who is receiving $4,000 a year, should be deleted from the cost base, because there is no service rendered in exchange for the money, and it should not be charged to the service user. The salary of an owner which is determined by the earnings of the business would disqualify itself for inclusion in the rate making base because it is regulated not by the value of the service rendered by the worker, but by the yield of the rates which are in question in the case.

In order to achieve that uniformity, it would not be necessary to appraise the value of the employees for the reason that employee's salaries are generally on a bargain basis, and there are certain economic reasons why those salaries ordinarily would not be seriously inflated or deflated. The economic situation takes care of that rather satisfactorily, although there might be cases where out of sentimental or other reasons the wages paid to employees were unreasonably high or unreasonably low. It is my opinion that if an appraisal were properly made for part of the workers, and the salaries of the other part of the workers were taken an a bargain basis, there would be uniformity as to all salaries for rate making purposes. In making such a proper

appraisal, the only essential thing is the service rendered by the individual whose services are being appraised. I know of no standard formula by which that appraisal might be arrived at.

I would think that a knowledge of the appraisers of the service being rendered by the individual appraised would be necessary to a proper appraisal. If that lack of knowledge were as exclusive as it would appear to be I would say that I would give no weight to the appraisal. Stand by time or expense, means time or expense which is necessarily devoted to the enterprise, but which may or may not be utilized. Stand by expense would be no less real if no utilization were made of it. It would be equally real if some partial use were made of it. A significant thing about it is that it is an inescapable expense. It involves standing by, being ready, able, and willing to serve if the demand for service
1435 materrializes. The greater the demand for the service, necessarily the less utilized stand by time and expense there would be. In this industry the stand by time is substantially seven days a week.

Let us assume that the first two days of the week are fully utilized to their productive maximum and that the remaining five days of the week entail, in one degree or another, depending upon the extent of its utilization for practical purposes, a stand by expense. The thing that I had in mind was this stand by expense which is given to all the services that are rendered on the market during any period of time. When costs are ascertained and considered on an annual basis that covers stand by expense. To the extent that the appraised salaries were properly appurtenant to service, these salaries entered into the ascertainment of that deficit of $356,347.37 shown on Exhibit No. 252. The amount included in the deficit was $597,775.00 less the elimination of $11,838.17 as shown on Exhibit No. 211.

This deficit is related to "net owner income" in that if the owner were compensated for his services on what has been found by these appraisal boards to be an adequate and fair compensation instead of taking money home the owner would have to bring money from home to the office to defray his expenses. In order to pay himself his own salary and pay the other expenses of his business, he would have to borrow this much from his wife to meet his obligations.

On sheet 3 of Exhibit 211, in Column C, the name of Mrs. T. S. Moffett should be substituted for the name of Mr. T. S. Moffett.

With respect to the commissions shown on Respondent's Exhibit No. 252, some firms show a greater loss than other'. It can be ascertained from the exhibits whether some firms show a profit.

In all cases save one there is a very direct connection between the appraised salaries and the profit or loss of a firm.

If the appraised salaries had been larger, the losses would appear greater.

It was my intention to delete from my cost study all losses arising on account of bad debts and losses in the loan business and salaries and other expenses connected with the loan business. They were not the cost of rated service.

Elements of cost divide themselves into two general classes. One element relates to the disbursement of cash
1436 or equivalents which are matured expense, and the other element relates to expenses which are of an accruing nature and which have not yet matured. With respect to the first class of matured expense, I know of no items which are omitted from my costs. With respect to the second class of cost elements, there are a couple of omissions. One of them is the expense of carrying such hazard as attaches to unprotected or uninsurable loss incident to having livestock in custody. The other is the hazard of losses which are unpredictable and perhaps uninsurable incident to financial losses resulting from the handling of sales proceeds and remittances on account of purchases made. I know of no very specific items which are of any serious import.

My computation of the accrual for workmen's compensation insurance was based on the appraised salaries of the owners plus the bargain salaries of the employees. It was based on an amount which would represent the payroll, if the owners were carried on the payroll at the amount of their appraised salaries which is chargeable against the commission agency services. Economic conditions have not changed the general principles which I discussed in my previous testimony.

My test to ascertain the difference in income produced by applying Tariff No. 2 and Tariff No. 3 to the 1931 business related only to the selling business for the reason that the buying schedules were substantially unchanged, and when I had ascertained the difference in dollars and cents, which would result from the different selling schedules, I applied that to the selling business in order to obtain a percentage of decrease. If this Exhibit No. 252, it will be observed that in the restated gross income shown on Line 3, the buying service commissions are brought down from Line No. 1 without change. The selling service commissions derived under Tariff No. 2 are adjusted by applying percentages of decrease discovered to have resulted from the application of Tariff No. 3 of a similar volume of business in 1931 as developed on Exhibit No. 251.

My percentages of decrease represent the percentages of decrease in the selling business of the 59 firms and not the percentage decrease in their entire market agency business. The time study covered salesmen's and yardmen's services on the yards. All that data, both time cards and sheets showing the data handled
1437 during that time, are in my office in Chicago and I will be glad to make them available if desired.

(Whereupon it was agreed that it would be satisfactory for Mr. Bachmann to examine these records in Mr. Roberts' office and make a computation from them and offer that computation as evidence in the record at the time of the oral argument in this case with the understanding that such offer would be subject to any objections that respondents might choose to make and subject to the right of respondents to cross-examine Mr. Bachmann.)

I have described in my direct testimony analysis of account sales covering the year 1931, which were made for the purpose of my test of the results to be obtained by applying Tariffs Nos. 2 and 3 to the business of that year. I have those papers in my possession. They consist of approximately 34,000 letter-size sheets on which the data appearing on account sales were transcribed and something over 300,000 punch cards on which the data were again transcribed for sorting and tabulating purposes.

A test of the tariffs could be made from the information on account sales.

We used those analysis sheets and the information contained on them to derive the gross income which was obtained by the use of Tariff No. 2 in the year 1931 and would have been obtained by applying Tariff No. 3 to the business of that year.

If the Secretary were to use these sheets and cards for the purpose of testing the accuracy of my work on Exhibit No. 251, I would expect no compensation whatever. If he were to use them for some other purpose and with the object of saving the Department expense, I would think that some reasonable amount of compensation, at least sufficient to reimburse me for the out-of-pocket expense that might be incurred, in order to so accommodate him, would not be wholly improper.

(Whereupon it was stated by counsel for respondents that from the standpoint of respondents he would be willing, upon terms agreeable to Mr. Roberts, for the Government to have access to these analysis sheets and punch cards, which are Mr. Roberts' property, without objection from respondents for the purpose of testing the tariff. It was agreed that Mr. Roberts' records
1438 might be used in court without being introduced in evidence at any further hearing provided that it is done with the knowledge of both the Government and the respondents; that is to say, if the Government should make reference to these rec-

ords to test an order, it would furnish a copy of the results to respondents prior to its use in the courts and the respondents would expect to do the same in so far as the Secretary is concerned.)

REDIRECT EXAMINATION

It true that each one of these gentlemen, the value of whose services was appraised by the committee, devoted a certain part of his time, 100 per cent, or in some lesser degree, to his respective agency. Now, my conception of the matter is that we want to know the fair value of that time, which was devoted to the agency, which was presumably employed solely in advancing the interest of that agency. It may be true that 100 per cent of the time so devoted was not employed at its maximum productive capacity but that was no fault of the man himself. I would not say that his time was to be appraised strictly with regard to the actual amount of production because the actual amount produced was perhaps regulated or governed by circumstances over which he had no control. If he was 100 per cent of his time available standing ready, able, and willing to serve, that is of essential consideration in the appraisal of the value of his services rendered. In some instances the setting into my costs of the amount of the appraised salaries reduced the loss shown as to the firms to which it related by Mr. Bachmann's cost study. In the majority of instances it increased the cost.

If Mrs. T. S. Moffet did not actually devote the full 100 per cent of her time, as indicated by the questionnaire, to the business of the Moffet Commission Company in the year 1931, there should be an elimination from my costs in respect to that firm.

When we include in the cost, as I have done, all the cost expenses that attach to a full year's operations, my statement becomes true that stated on an annual basis all of the stand by expense is comprehended in those costs.

RECROSS-EXAMINATION

If it is conceded that $6,000 was a fair appraisal of Mrs.
1439 T. S. Moffett's services as a clerk, if she did nothing other than clerical work, it was a little high according to the present conception of the worth of clerical services.

(Whereupon the witness was excused.)

MR. J. C. SWIFT, a witness called by the Respondent, after being sworn, testified as follows:

I testified in a former hearing and now occupy the same position with the Swift and Henry Livestock Commission Company

which I occupied then. I am the owner shown as number 59 in the audit. Since the last hearing there has been a general adverse change. The size of shipments has decreased, the unit is smaller, and the labor is greater. We had some increase in expenses, despite the depression, among these are those on account of postage, checks, telephone and telegraph, and taxes. The breaking up of shipments into smaller units has necessitated more labor, the use of more stationery, telephones, and telegrams. There has been an increase in the amount of service which it is necessary to render. This has grown out of conditions which exist and out of increased competition from other markets. Under conditions as they now exist patrons are very careful to get the best possible advantage from the sale and handling of their livestock. The total volume of business at the central markets shows a constant decrease, and this naturally increases the competition for that business open to several markets. My firm struggles to maintain its volume and uses every legitimate efforts to do so. Volume is our only salvation. The diminishing volume affects our gross returns materially. The activities of my firm and those of other firms in handling pasture leases, in appraising livestock before it reaches the market, in helping shippers in connection with financial affairs, have been of greater assistance than formerly. We have put in more time in working off the market for shippers than we did formerly. As illustrated, I spent last Sunday in closing 75 feeding contracts which I made for a Texas customer who had a big string of cattle on Kansas grass. Sunday morning at 5 o'clock I left in my car, closed the deal, delivered part of the cattle, got them on full feed, on contracts which I feel will net the customer $20 a head more than the cattle would
1440 have brought on the market. I got no compensation for that, no allowance for my expenses, or for my time, or for the use of my car. This constituted a part of the general services we are rendering. Our customers are our partners. I recall that a customer told us that he made $5,000 on a string of yearlings and that the profit was due entirely to his pasture contract. He volunteered the information that his profit was due entirely to our activities. He lived in Texas, never saw the pastures, and did not know where they were. We found these propositions and submitted them and looked at them. He shipped the cattle according to our directions, we went out to the pastures and inspected them, and he shipped them to market according to our directions. We got no compensation for this service. I think this is a part of our duty. I do not think that we have any right to rear back, go out and sell a man's cattle as quickly as we can, and take our commission. When a man trusts us with his business, we are engaged to give him our best service on the

market, as if we were retained at the beginning of the year by a client. We exercise our best judgment and utilize all the experience and knowledge we have to serve the customer properly in the marketing of his cattle regardless of where they go. If we can secure for him, or he can secure for himself which we think will bring him more money than he would get by bringing his cattle to us, we advise him to sell the cattle. We frequently have cases of this kind. It is not a proposition of going out and getting new business, but is a part of the general service we render. I have not time to go out soliciting new business. It is not practicable on account of variations in receipts to regulate personnel so as to meet the peaks of business without keeping your organization intact when receipts are at a point below the peak. Our clientele expects certain men to sell their fat cattle, and grass steers, and fat steers, certain men to sell their stockers, certain men to sell their calves and butcher stuff. We do not know whether they are going to come in the day we have 7 loads or 70 loads but when they do come it is with the understanding that the man who has been selling their livestock for them will be there on the job. We have to maintain the equipment, the volume of receipts from one day to another. It is not like the volume of business of the packing house where they have a mob assembled outside the gate, crowd and pack, in order to get a day's work. Our
1441 men are skilled men, trained in their work, and familiar with the operations and needs and desires of our customers. The auxiliary selling service or off the market service is rendered on days and at times of the year when receipts are less numerous than in the October peak. We attempt to utilize the time of our personnel to the fullest extent. 95% of our trips to the country are made at the end of the week when we know there will be comparatively no business. Friday and Saturday are almost blanks, and Sunday in the last few years, we have had to work particularly in the country. Should all the market agencies, by common agreement, cease all country service and confine themselves solely to the operations on the market, that is to the selling and buying of livestock, there would be unquestionably a sharp shrinkage in the volume of business for the market as a whole. As an individual firm we would participate in the decline. Should our firm alone discontinue its country service, and should other firms continue theirs, our firm would sustain a serious loss in business. It would not be advisable for our firm to pursue such a policy. I think the livestock commission business is the most highly competitive business that I have ever seen. It is strictly a matter of selling personal service. Unless you maintain the personal contact as close as you can, you weaken the prospects of getting business and of exercising the personal

service. Furthermore, we would deprive our customers of the service. It is of great advantage for a salesman to have seen livestock and to be acquainted with the manner in which it is fed and handled before it is marketed. All livestock is purchased on the basis of what it will kill or, at least what the purchaser thinks it will kill, and many at time on the basis of what buyers say. If the salesman is in a position to state the character of the ration and the length of time the cattle have been fed, what they weighed when they went on feed, it is helpful to him in making the sale and getting the better price. It is well for the operator of a commission business to know something about his shipper's financial condition, the title to his livestock, perhaps through contacts derived from close acquaintance and observations made in the country. Inasmuch as we are responsible for seeing that the proceeds reaching the proper party, it is essential for our own protection that we know as much as possible about the financial condition of the man who ships the cattle, and as much as possible about the shipment itself.
1442 If we attempted to do business in the expeditious way as we do now, do it without the knowledge referred to above, we would run into a tremendous amount of losses. Business would be slowed up. If we received a bunch of cattle from strangers we would not remit the proceeds as they directed; we would go to work to find out from the bank to whom the proceeds would be remitted. Intimate knowledge of the shipper's financial condition make' it possible to affect a daily clearance. Prompt clearances facilitate the operation of the market. If we did not familiarize ourselves with conditions in the country operating costs on the market would increase and business would decrease. We are confronted with diversion of business from all markets. Our firm spent possibly one thousand dollars developing a fine line of business in and around Fort Worth. We have enjoyed that business for years and spend part of the winter and spring there. The trips are long and expensive. Just as we got ready, one of the big interior packers gets down there and buys it all away from us. Now that was a gamble that we had to take, a legitimate gamble we had in trying to get business. We had it all ripened to come when they got it away from us. Direct buying has increased since 1929, especially the direct buying of hogs. It is almost impossible to meet direct buying competition as carried on in some places. During the last two years, from 1929 to 1932, we have come into competition with agencies financed through the Federal Farm Board. We have been precluded from this business, because the avenues of financial credit denied to the old-line companies are extended to a few of the preferential companies, cooperatives, so called. This has caused livestock that

would have normally flowed through our hands and been sold by us to go to our competitors, the cooperatives, affiliated with the Farm Board. The Texas Marketing Association last winter operated with Government funds. Several million dollars were loaned on cattle in Texas to come to Kansas City this summer on condition that the cattle must be shipped to the local representative of the Texas Marketing Association. Dick Arnett, an employee of the Texas Marketing Association, or of the Producers, has been active in working for those agencies. He is active and able, and has been in charge of all of these outside activities connected with the placing of these cattle that were being
1443 handled through these Government-furnished funds. None of his salary is paid by the Producers Commission Association. If we had the credit to extend he would not have had one-third of the business. He has been the chief contributor to the Producers Commission business at Kansas City this year, regardless of whether they pay him or not. He is frequently here on the market, but you can find him during the summer and fall seasons at Emporia, which is in the heart of the pasture country. Government Exhibit 114–59 shows an expense item on account of newspaper advertising of $2,028.11. That item can be properly classified as advertising, but there is another view. With 50 or 60 firms all located at the same place, all charging the same rate, and all inviting business, if one does not keep himself constantly before the customers, he will lose part of them. If you drop out your market letter one week, to say nothing of two, you get a lot of letters which say: "Have you gone out of business? Why didn't we hear from you." I don't think you can say that advertising in newspapers is soliciting new business. It is soliciting people who might be dissatisfied, but it is reminding your old customers all the time that you are there and that you want them to remember you. I do not agree to the statement that advertising is economical waste. I think that the business of this country has been largely developed by advertising. What might be true of Russia, with very little population and limited newspaper circular, would not necessarily obtain at all in this country. I consider that the expenditure of that $2,028.25 for newspaper advertising was on account of business maintenance as well as the acquisition of new business. The next item, on account of circular letters, amounts to $1,782.46. The next item is $2,280.00 on account of postage on market letters. The expenditure of these two items is for the acquisition and solicitation of new business primarily. If I had the time I would never send a circular letter. It is the best substitute I can invent for a personal letter that I would like to write. I write all our

circular letters and it is because I do not have time to write each man individually that I send any circulars at all. We do not send any circular letters out in proportion to business done as other firms. There are firms with less than one-half of our business that send a great many more circulars and have a big-
1444 ger list. When a man writes and asks to have his name put on the mailing list I check to see if he had sent us any livestock within the past year. If he had I think favorably of putting him on the list. If he is not on the list I hold up his letter temporarily, write him, and ask him what he has and when he expects to ship. If I get a favorable answer I put him on the circular, and if I don't I don't put him on. I should say that in about 70% of the instances these circulars are more letters and advisory to our established trade, or to people who have indicated that they expect to have us market their livestock. We do not send circulars to all our drive-in customers. There are — good many people who used to ship but by train who now bring straight carloads by truck. These get circular letters. The next item is $183.83 on account of novelties, and there is another item designated "other" amounting to $258.42. I suppose that this is on account of pencils, books, and novelties. We try to hold these down as much as we can. The' constitute what might be classified as advertising. The next item is entitled "travel" and amounts to $9,141.63. Those figures represent the total outside expense activities of our firms. Some of our men rarely go to the country except on appraisal trips. Others while making appraisal trips go to see as much livestock as they can locate in that particular neighborhood. Our expenses on account of conventions and meetings are rendered separately. As to the other expenses than these, I should not know how to break them down. We have no record, but the expenses of appraisals and the number of trips made by request are increasing. The number of trips made by men who are merely sent to the country to see if they can get some new business is decreasing. One goes to conventions and meetings because he hopes to see a greater number of people at a lessened expense. He goes there to talk up his own market as against other possible markets. Frequently when you go to conventions you run out to neighboring towns or stop on your way back to see cattle and see people whom you have met at the convention. It is very hard for me to break up this expense for the reason that when I send a man to the country on an appraisal trip I tell him to expose himself to the business as much as he can. Whatever my expense account has been it has been largely appraisal. Sometimes it was ap-
1445 praisal of something that was inherited, something that

man had commercial title to but upon which we had a lien. Usually there has been something with reference to cattle which he had and wanted to know what to do with. My own personal account would be almost entirely appraisal. That would be true of some of our other men, of some others it would not be true. The way it is broken up in the audit it is about 50-50, soliciting one-half and appraisal and convention about one-half. I think that would have held fairly good up to the last year or two, but I believe now that the expense which we cannot get away from is more on the appraisal end and less on the soliciting end. I think that I estimated the soliciting end at 60% and that would be conservative now. If the basis were the percentage of times we went by request as compared with the percentage of times we went without request the percentage of requested visits would be larger than those unrequested. In my estimate I have made allowance for the fact that when we go out on appraisal trips we do some soliciting also. I think now out of ten trips nine are by request. Just before I came up here I had a call from Fort Worth, Texas. A man had some cattle in feed at Emporia which are billed to us. We will get them, but he asked me to go down to Emporia and he does not expect to pay our expenses to look at his cattle and tell him whether — ship them to Kansas City or Chicago. If they go to Chicago we don't get them. That is an appraisal trip devoid of all possibilities. We will not get new business on that trip, and we would not come in contact with any business. We would go from here to Emporia, as quickly as we could, turn around and come back. But this man has been a good friend of ours and we could not refuse him. We hardly ever go to the country without request, but we hardly ever go to the country, if we can help it, without doing some soliciting when we get there, if there is anything in the neighborhood. When we get into districts where stuff is tied up we sometimes find that the cattle are mortgaged to the Producers Commission Association. We found this situation this summer. Under such circumstances we do no soliciting in that neighborhood because it would do no good. We are not spending our money where we do not think it is going to do some good. When it is a fifty-fifty proposition we do not want it because things are never as
1446 good as they look along these lines. It always costs more to get business than to estimate. Allowance has to be made. I think 40% of the total item of $7,141.63 would be a liberal estimate of the expenses incurred in soliciting new business. We have an automobile and we use it in the business. We tear it up frequently and it is a constant source of expense and annoyance.

I have not been able to solve the automobile question satisfactorily. I would not know any better way of prorating the rest of the travel expense. I do not use that automobile when I make appraisal trips. I use my own car. The expense incident to its operation and the depreciation on it are not charged to the firm of Swift and Henry. I pay all the bills myself. All the other members of the firm charge their automobiles expense on the books of the firms. The next item is $1,608.92, and classified as business getting expense under the head "Exchange Soliciing." In the former testimony it appears that that item is the balance exclusive of life insurance premium payments. The item consists of membership dues paid to the Exchange, assessments, all the transportation fund of the Exchange, the agricultural development fund, and reimbursement of the Exchange for the amount it advanced in the defense of Respondents in the rate case. It is classified by the Government accountant in our firm as a business getting expense. I have never thought of the Exchange as doing any soliciting. I think of it as policing the market, looking out for the railroad rate situation in our territory, and looking after the dockage proposition. The only soliciting done by the Exchange in my judgment is in connection with its radio program directed into territory where stocker and feeder buyers are located. The Exchange has a rule which limits the amount of time off the market members of the Exchange may spend. It keeps a record of those who go to the country. I have never known of the Exchange to do any soliciting for our firm. I would not classify the $1,608.92, as a new business getting expense. An item of $13,556.86 is listed as a business getting expense and consists of an amount of the time value for owners and employees allocated to country trips. This amount does not represent the difference between our expenses assuming that these people were in the country and what our expenses would have been assuming that they remained at home.

Had they been at home all the time they would have spent
1447 Monday, Tuesday, and Wednesday in taking care of business we knew was coming, and the rest of the time warming their chairs in the office. The only difference in expenses to our firm due to going to the country was the actual traveling expenses shown in the audit. The item $13,556.86 does not, in my judgment, constitute a business-getting expense. The total of the business-getting and maintaining expenses heretofore discussed and shown in the audit for the year 1931 is stated to be $31,595.00. I consider this an overestimate. This item amounts to 26% of our gross income. We could not reduce these expenditures to an amount equal to ten per cent of our gross income and

maintain the present service we are rendering. Eliminating from the $31,595.00 $23,857.85 there remains $7,737.15, which is 6.2% of our gross income. In my judgment this percentage is much more nearly representative than is 26% of that portion of our gross income directed toward the getting of new business. The portion of our business getting expense classif-able as advertising would constitute an even less percentage of our gross income. I think that the amount classified as "advertising" is spent in maintaining contact and keeping old customers lined up, not in securing new business. In the first hearing in this case I stated that a large proportion of the off market expense related to the cattle end of the commission business and particularly to straight carload consignments, or to customers having a comparatively large volume to market. That is still the case, but a few firms are now being called upon to render off market service and incur off market expense in connection with sheep. Sheep are billed to Kansas City to be fed at some intermediate nearby feeding station. If the shipper comes with them he comes into the market and asks you to go out and look their sheep over and sort them. If he does not come with them he advises you of their number and requests you to look after them. Comparatively few sheep now go into the Kansas City market which do not receive off-market service.

If we had had no drive in business we would have had the same men employed, we did not add a dollar of selling expense because of drive-in business. We did not put another man on the payroll. We reduced the pay of men that were selling the straight carloads that continued to sell the drive ins. In
1448 handling the drive-ins and the yarding of them I took one of the boys that we had been using to yard cattle from the chutes and let him yard the cattle from the drive-in gate. Under these conditions how we can sustain a loss of our drive-in cattle is beyond my understanding. I am not an expert accountant but if we handle' a thousand loads of drive-in cattle last year without adding a man to our payroll, and still handled our straight car business. I don't believe we lost any money on the drive-in business. What we got out of ours drive-in business was just that much tossed in our lap. We did not spend any money generally speaking to get drive-in business. We handled it with the force we had before and would have continued to have even if we had not received drive-in business. It may be true that we lost money on our drive-in business, but I wonder who furnished it. I did not put it into the business. There is something wrong with the figures which show the loss on drive ins. Our expenses shown in Government Exhibit 114–59 are as low as we feel we could make them under the circumstances of

our operation. I have never in all the 30 years of business given the expense account so much consideration. I have never worked for as low a compensation for myself and my associates and have never asked my men to work such long hours or got so much service out of them. If there is a dollar of expense which has been wasted it has been wasted unknowingly. We have tried to meet conditions to the best of our ability. I think the fundamental error in the Government's conception of the case is in considering all men equal. Until there is a different viewpoint I do not think there is any use to discuss the matter in a general way, I think we should be regarded as professional men, as men holding key positions, men who have spent years in training, men who have special knowledge with respect to markets, clientele, and changing business conditions. We have access to information regarding these changes. To say that a man can sell so many cars of cattle and be worth so much per year, when we all know he cannot get that arbitrary number, or to say that I am worth so much and that somebody else who is possibly in the same position, but not handling anything like the volume of business, or putting in as much time and energy, is worth as much as I am is absurd.

1449 CROSS-EXAMINATION

As I have understood it the Government has said at some of these other hearings that a cattle salesman is worth so much a year if he can handle so many cars of stuff. The facts are that there are men selling on the market who would sell my cattle for nothing, but I would not employ them, and on the other hand there are men that would charge twice the prevailing rates that I would be glad to have. I think you are trying to reduce the human equation to a set form, and I do not believe it is possible when you are employing skill in the exercise of judgment and integrity and experience. I think that the application of the performance record to a certain salary results in putting a limitation on the amount that a man may earn. I would not say that a definite limitation had been placed on what a man can earn but there has been an expression as to what the Government thinks men doing certain work are worth, and the results are the same thing. Under uniform rates uniform earnings do not result. There is such a low level of commission earnings that it is impossible, under present conditions, let alone any contemplated further reduction, for men of ability to earn enough to take care of his current livelihood needs and provide anything for his old age. You never heard of a commission man, particularly in the last few years, who has accumu-

lated a dollar. At least I have not. I think this situation is peculiar to the rates under which we are operating. Monday morning we had 9 loads of cattle, a four load bunch from one customer and a five load bunch from another. In order to protect ourselves as much as we could we made them up in two shipments because they came from two towns and out net commissions for 9 loads were $123. Under the rates in effect at the time of the previous hearing our commissions would have been $171. The difference is $48. I do not think $123 is proper compensation for the skillful handling of nine loads of cattle which is because they come from one owner. I noticed another load of cattle. We had this week coming by truck. We got a little better return on these. We sold $1,685 worth of value and and got a little less than $13 commission, three-fourths of one percent of the basis of present market values. This is not fair compensation. The condition has been growing worse since the Government has entered into the fixing of the
1450 commissions. I attribute it largely to that, but it is also due to the factors entering into it now, the lessening unit charter of shipments, and the increasing demands being made on us by our customers. There has been some change in the volume of our business. We have had to participate in the lessening volume generally. We have been able to maintain our relative proportion better than some other firms. We have asked our man to accept less compensation, but in spite of that our earnings still go down. We are being slowly but surely ground to death; there is no question about it and that is the general condition in the central markets in the Middle West and Chicago. Chicago enjoys a much better rate than we do. St. Louis enjoys better rates and has for sometime. Still the conditions are getting worse and worse at all these points. We have not had to add a single man to our force on account of truck in business. As a matter of fact we are handling our business, including the truck in end of it, with one man less than we had at — time of my former testimony.

He worked in the butcher alley as a yard man. When an organization is set up within certain limitations it has the capacity for handling a certain volume of business. Any increase in business, either truck or rail, can be handled up to a certain point without expansion of force. This is particularly true if the business should come in evenly distributed. A great factor in trying to handle a livestock commission business is the uneven nature of receipts. On account of difference of this kind an organization has to be maintained at all times sufficient to take care of a maximum run at any time. It is difficult to say

what the peak carload maximum capacity of our firm is, but I would say without any hesitancy, that with a normal flow of business, Swift and Henry, with their present organization, with practically no added expense, except such as would be incident to the account sales and few telegrams and things growing out of the increased business, could handle one-third more business, but as to any particular day, for one day day we could handle more than that, particularly if we had a big run today and a slow market we would be jammed up. There are a good many things entering into it, but if the business could be distributed and flow evenly 30 or 40 loads a day, we could handle it every day in the week, including Saturdays, we could make a
1451 tremendous increase in our business. But we have tried for years to reach that condition, but we cannot develop it. That rests with the men in the country that ship. They ship as they see fit and not as we suggest, and, another thing, in connection with the peak load at Kansas City, is the fact that we have such a large percentage of cattle that do not sell as killers. They are bought by traders and a trader is nothing more than a merchant in cattle, and he wants to stock up Monday morning and have the rest of the week to sell his merchandise in, because he does not want to have any cattle left, and, if you bring your stock cattle in later in the week, he is afraid that he won't sell them, so he lays off, and, as a natural result, stock cattle at all markets in the country come most generously on Monday. I have never seen so many people buying their own cattle as in the last two or three years. This condition is growing. There has been a decrease in the number of cars to a consignment and the number of head to an ownership. This condition has developed largely since the advent of good roads. Five years ago I don't suppose we had 20,000 trucks in Kansas City in a year with livestock. This year we will have 150,000 trucks. We use to have what we used to call strings of cattle. There are very few now. They are rare. Nine loads of cattle from one owner on one day is quite exceptional. It was mentioned in the paper as one of the features of the market. A few years ago one man would not have excited any comment by having 20 loads. These nine loads were feeders, weighing 778 pounds, and brought $5.90; they came direct from Texas and were sold to a trader. He had been very fortunate in selling some of these cattle before to an Ohio man and I think he possibly had an order for them again. All the nine loads were sold to one buyer. They belonged to two different owners. We kept the shipments separate and weighed the cattle in several drafts. We sorted out ten cattle that he would not buy. We took those

ten cattle over to our butcher alley and sold them to the packers for killers. The ten cattle weighed about the same as the others, perhaps they were a little lighter. It took three of us to sell the cattle outside of the ten. I helped to sell them myself. I know most of our people. I know their cattle and they frequently call me up or write, "Attention for Mr. Swift: I am sending you such and such cattle. I wish you would give
1452 them your personal attention." If, when the cattle come in, they prove to be fat, I go out and look them over with Mr. Henry. I get Mr. Henry's idea. If I think they are worth more I don't hesitate to say so, and I go around through all our straight bunches. I don't pay much attention to drive ins unless there are a few fancy head from some personal friend. The man who was selling these cattle comes up to the office when he gets up to $5.90 and told me where he was and said: "Shall I sell them or not?" And I said, "Under the circumstances, I believe I would sell the cattle." I really decided, but he worked up the trade. I had an assistant who sorted off the ten cattle and got the shipments in shape to show them and had found the buyer. So it really took three of us to close the deal. The nine loads were not all the cattle we had that day. Mr. Henry had some fat cattle, and we had two loads of cattle from Garden City. I did not attempt to say positively. As far as I remember they were all sold the same day. I have general management of our firm and I attempt to exercise that function. We have made some retrenchment in our business during the years 1931 and 1932. The pay roll was reduced at the first of 1932. Regular employees were reduced ten percent, Mr. Henry and myself fifty percent. There was one month in which I asked all the boys to work for one-half of a month's salary in addition to the ten percent. The percent did not apply to that month. I am not sure that the ten-percent reduction reached back to 1931, though I cannot be sure. Besides these reductions I have made some individual reductions in two or three cases. We are operating under a substantially less salary list than we used to, but we don't seem to be able to get our incidental expenses much under previous years. By incidental expenses I refer to other than salary account. We feel that we are really being imposed upon by our customers. This has been a matter of grave concern to me. I think it is more largely due to the competition from other markets than any other single factor. I think, however, we have had people in the business who were overzealous in suggesting to patrons whose business they were not getting that if they would like to have them come out and see their cattle, they would do it. It has got to the place now where a man with any reasonable size shipment will hardly send them to

the firm unless you go out and appraise them for him and
1453 then does not always send them to you. It is something that I should like to see discontinued, but I don't know how it can be accomplished.

Pasture contracts entail considerable expense to our firm. This is because water is a vital factor. You have also to go each year to the pasture. If you do not go you do not know whether the water has failed. The springs may have filled up, the windmill may be out of order, or the tanks may have rotted away. You have to make personal inspection of these pastures before you dare close a contract.

The man who owns the cattle usually remains in Texas and leaves the matter entirely to you.

It would be practicable to have an arrangement whereby the owner would reimburse the expenses incurred on account of the pasture contract if you could change the nature of the Texan and change the attitude of your competitor. This you cannot do. The Texan would say that our firm was getting to be a piker. Should our firm try to write this provision into the contract some other commission men on the Kansas City market would handle the contract without that provision, and if he did not some other commission man at some other market would do so. We expect each year to place about 20,000 cattle in Kansas pastures.

Our firm has never kept any account to determine what it cost to place pasture contracts. In my own mind I am satisfied that the placing of these pasture contracts is a paying proposition, and I notice that the firms which enjoy the larger portion of the pasture cattle are the ones who are most active in negotiating the pasture deals. We used to write into the contract a provision requiring that the cattle should be moved in shipments of not less than five cars because the cattle are frequently from ei[illegible]t to fifteen miles back from the railroad. It is quite an item to bring them in. The pasture men would not consent. Competition has changed the situation so that we write in the contract now not less than two cars. The unit is getting smaller even in pasture consignments.

Our appraisal service is not confined to large consignments.
1454 We have certain men who establish contacts with the larger business. We have others who establish contacts with the native business, particularly the feed lot business.

The appraisal service is rendered chiefly in connection with sheep and cattle.

The activities of the agencies which ultimately get their money from the Government have become more elaborate and

extensive. These agencies are now advertising that they will loan money to feeders at six percent. The banks here are charging considerably more than that for what little money they are willing to loan.

Some of this appraisal is in connection with our loan work but not nearly such a large proportion of it as formerly. We have reduced our loans materially. I do not think that ten percent of our appraisal work during the course of a year would be on livestock on which we have loans.

Our firm does not establish a budget according to which it predetermines the amount which it will expend for getting and holding business or for other items of expense. We cannot tell what the developments will be. We know in a general way what our expenses per month are. Our incidental expenses run about so much and we know what our salary account is going to be. I can figure pretty closely at the beginning of the year what the expense is going to be. I then just make a bet that I will get that much or more business. I do not know what the competition at Denver or Fort Worth or Wichita or St. Joseph will be, or how much pressure those markets will exert for or against us. We cannot anticipate the situation. There are firms down there that say they will not travel at all. It is reflected in their volume. They are the ones that do the least. The flow of business and the character of business vary, and there are fluctuations in the market. I testified last year that the character of the service rendered is a big factor, but I tell my boys that handling people is just as important as handling their cattle. Courtesy and courteous treatment, embraced in the character of service, are big factors. The important thing is taking the attitude that your customer is your partner and that you should do anything you could from answering the first letter you get from him to going out in the middle of the night and pulling his livestock out of a wreck somewhere. The initial ship-
1455 ment to a firm usually costs more than the firm gets out of it. New business doesn't cost more than it is worth if it is handled in a way such as to bring back a return engagement. We are frequently called out on a trip to see a man and spend quite a little money. He may ship us one load of stuff; that one load didn't pay for the trip. It would cost us money, if we didn't hope for a follow-up. The firm that can't hold its business doesn't make any money. I never thought of payments to the Exchange as expenditures for solicitation. Fewer of our customers come to market than when shipments were larger. This statement relates to our carload business. When

they do come, however, they expect attention from our personnel, but nothing like in the old days when money was spent on entertainment uptown. They do expect to visit with us in our office.

REDIRECT EXAMINATION

The flow of business to one market or to another is determined largely by whether or not the markets are in line. Freight rates also have an effect upon the flow of business to a market. I have heard no complaints on the part of our customers as to the commissions we are charging. The tacking of small items on to the flat charge, such as the deductions made for the National Livestock and Meat Board is quite irritating and has a tendency to develop friction and to produce inharmonious relations. Commissions charged on cattle weighing over 800 pounds amounted to 96/100 of one percent of the gross proceeds. I do not believe that the moving of rates up and down by as much as 15% of the commissions charged would have affected the flow of livestock to my firm. Such a change, however, would affect our revenue materially. A two dollar savings to a customer who ships two cars a year on the average is four dollars, but a two dollar savings or less on from five to seven thousand cars that we can handle in a year is a vital factor to us and if carried any further is bound to affect our efficiency. We charged off in the year 1931 $29,237 on account of losses incident to the loan business. We had indorsed all the cattle paper which we rediscounted. A witness for the local agency of the Producers Commission Association testified that their local agency had indorsed paper to their credit association up to
1456 the middle of the year 1931, but that under an arrangement with their association they had been relieved from the effect of a liability incident to these indorsements. Those to whom we sold our paper bought it on our endorsement. We have made good our endorsement of that paper up to date and that is where the loss of $29,237 is.

(Whereupon the witness was excused.)

Respondents' Exhibit No. 255

(Whereupon Respondents offered and asked to have received in evidence Respondents' Exhibit No. 255, the same being a comparison of the elements of cost and reconciliation of difference between Respondents' cost study and the Bachmann cost study relating to 59 firms.)

MR. C. A. STUART, a witness called by the respondents, after being sworn testified as follows:

DIRECT EXAMINATION

I am the C. A. Stuart who in 1931 was a member of the firm of Stuart, Gillespie and Company. Mr. Gillespie died during that year. I am now a member of the firm of Stuart-Robinson-Hoover. I will have been in the commission business at Kansas City twenty-six years the first of January. I started in the livestock commission business in Wichita, Kansas, and still maintain my office there. I began business there 29 years ago. I have been handling livestock ever since I was a boy. The net return to the owner of a livestock commission business or a market agency has become worse at the Kansas City stockyards in the last year or two. The work is harder. Demands on the part of customers for market service and requests have increased since 1929. General conditions have been one cause, probably the principal one. Competition from other markets has entered into it. Cooperative organizations with their stockholders throughout the country who solicit business for them has been a cause. Statements made in speeches by the Secretary of Agriculture to the effect that the cooperative movement was receiving the assistance of some three thousand county agents throughout the United States has been a factor affecting our business to some extent. During the year 1931 I managed the business and directed the manage-
1457 ment of the office as well as the selling of cattle in the yards. I put in a good deal of time the latter part of the week in the country. I feel that this is a great benefit and that my customers consider it a benefit. I have requests from a great many of them to look at their livestock and to see how they are handling them and to advise them. I know that it is of benefit to them and I am sure that they feel that it is. Due to the hard times which prevail, customers seek counsel and advise more generally than they do in normal times. I think instances occur every week in which advice to customers proves beneficial to them. It probably occurs every day. Purchasers of slaughter cattle want to know how they have been fed. It is an advantage to a salesman to be able to tell the purchasers accurately and to base his statement upon his own observation and information. It is not so much of advantage to the salesman as it is to the owner of the livestock. He is the man who benefits. Last week I had two cars of cattle from a customer of fifteen to eighteen years standing. I did not seem to be able to get what I thought his cattle was worth. I finally got Armour's head man to look at the cattle. I told him that I knew how these cattle had been handled

and how they had been fed, that I had seen them when they were put on feed in August and that I had seen them in the feedlot two or three weeks ago. I finally got 25¢ a hundred more for cattle than any other buyer had bid on the cattle, and a fairly satisfactory price. This week Monday I had a load of the same cattle with a little stronger market, I sold the same buyer at a price 25¢ a hundred higher than the price paid for those sold the previous week. He said that the cattle killed satisfactorily. He bought the second shipment of like cattle at a price 25¢ higher than anybody else bid for them. The benefit accrues to the owner of the cattle and not to the commission firm who gets the same commission regardless of the price obtained. The benefit to the commission firm arises from the fact that by helping the customer it retains his confidence in a greater degree. Most of my business maintaining effort takes the form of trying to benefit my existing customers and trying to merit and hold their confidence. I put in a very small portion of my time and incur a small proportion of my expense in getting new business. My business is very largely confined to the handling of cattle. It grew out of
1458 personal confidence and the belief of my customers in my ability to serve them well. Government Exhibit 114–25 which is an audit of my business shows an item of $1,898.73 standing opposite the sub-classification "advertising" under the heading "recapitulation of Business Getting and Maintaining Expense." This sum is the total of several items appearing in the audit, one of which is circular letters, another postage, another specialties, novelties, and then miscellaneous items. We send out market letters. We have a mailing list. Eighty-five or ninety per cent of our entire mailing list consists of people for whom we are selling cattle or for whom we have sold cattle within the last two or three years. We revise the list from time to time. We seldom retain any one on the list from whom we have not received business within two years. We do not send these market reports to all of our drive in customers. The remaining 15% of our mailing list is made up of friends of our customers. Our circulars are sent out quoting the market. Quite often we add our opinion of the future market. We do not send them as advertising or soliciting letters. Very little of the $1,898.73 was spent for newspaper advertising. It is my judgment that 85% of the items $504.74 and $795.89 spent on market letters and mailing should be treated largely as service to our customers and not as cost of soliciting new business. Some of the $500.60 spent for specialties and novelties went to our established trade and some to prospective customers. These specialties consisted largely of memorandum books, pencils, and the like. The other $99.50 of the

expense could probably be classified as expenditure on account of maintaining business through advertising. The amounts set opposite the sub classifications under business getting and maintaining were given to the auditor at the time the audit was made and represent my best judgment as to the amounts. We attend the meetings of the Kansas Livestock Association out in Wichita each year and we come in contact with various livestock men, for some of whom we sell livestock. If I have ever picked up a new customer at these conventions I do not know it. There is very little soliciting done at cattlemen's meetings. It is kind of a get together meeting. The Exchange does not require us to register to go out. They do not consider it as soliciting. Frequently we do pasture lease work at these conventions and frequently get
1459 our customers and the pasture men together. We frequently go to these meetings to represent the market, realizing that there will be men from other markets there. We do some of our travel by automobile but don't charge automobile expense up on our books. We charged gasoline and oil used on trips during 1931 but made no charge to the company for the use of our cars. Most of the trips we made were by automobile. I do not think that Exchange assessments and dues on account of the transportation fund, the agricultural development fund, and the assessment to reimburse the Exchange for its expense in connection with this hearing have anything to do with the soliciting of new business. I am now one of the directors of the Exchange and have been a member of it for many years. It has never been the policy of the Exchange to solicit business for any particular firm with which members of the Exchange were connected. The activities of the Exchange have been devoted to safeguarding of the shippers' interests, sanitary activities, the agricultural development fund, protection of freight rate situation, the radio and radio service. As a director of the Exchange my official attitude toward any officer of the Exchange who engaged in solicitation for a particular firm would be one of opposition. It has been the policy of the Exchange to hold down expenses incident to broadcasting and soliciting of new business. A good many rules of the Exchange had to do with those matters. I have served as a member of the board of directors of the Exchange for 13 years out of the 26 that I have been a member of the Exchange. During that time the Exchange has done everything that it could reasonably be expected to do to minimize and reduce, where possible, the activities of the various member firms in connection with the expenditures for solicitation of new business. In 1929 a rule was adopted whereby members of the Exchange were to discontinue the giving of free subscriptions to the Daily Drovers Telegram to their customers. That action caused considerable opposition

on the part of the stockyards company and other interests and on the part of some members of the Exchange. They felt that it was unwise. We employ no regular solicitors. Our soliciting is done by those of our salesmen we can spare. Solicitation is done at the latter part of the week when receipts are very light. Our men go out to the country and appraise cattle. The only ex-
1460 pense that we could save if we did not send out these solicitors would be the little additional cost in the necessary expenses of living and the cost of gasoline and oil. We would make no savings in our salary account. It would be very largely a matter of stand by time in the office. During the periods that our solicitors are in the country I feel that we are serving our customers better than we would serve them if we remained on the market. I, myself, would much prefer to stay at home during the latter part of the week than to go out to the country. On the basis of the analysis of expenditures as shown in the audit, I consider that 2.8 per cent of my gross revenues from commissions would represent my out of pocket soliciting expense incurred in the year 1931.

Rail cattle are received very largely on the first three days of the week. They pile up in higher peaks on those days in the fall season than at other seasons of the year. It is necessary for me as an operator and manager of a commission business to be ready to handle the cattle and to have a personnel that is equipped, skilled, and experienced, in order to handle the cattle properly. That is a difficulty which confronts me in operation. The conditions confronting me would be quite different and the costs would be quite different if these receipts were spread out over the five or six days of the week in comparatively even amounts as regards days and seasons. This is a matter over which I have no control. Cattle move at certain seasons of the year. The climatic conditions and the shippers control the situation entirely.

CROSS-EXAMINATION

Prices vary from month to month and the spread varies from month to month. The spread in prices during July and August this year was equal to what they were back in 1929, because in August we had a very high top for our cattle and a very low lot of cattle selling at very low prices. The prices have come closer together at this time. I could not say that the difficulties of salesmanship are less when the spread is less. I do not recall any time in my experience when it was unnecessary for a commission man to do some appraisal work. I recall no time when commission men did not perform this service, but I can recall times when
1461 they did not do 10% of what they do now. I think this change has come about because of the realization on the

part of customers of the benefit which commission men can do them in appraising their livestock. Appraisal work has grown gradually from a very little to the great deal that is being done now.

If I give the buyer my personal knowledge as to how cattle have been fed before they come to market it carries more weight than what the customer has told me about how they have been fed. If I should visit a feedlot and find out that cattle have been poorly fed, my attitude would be to say as little about it as possible and let the buyer be his own judge. We give them the best information we have, especially if it will be a help in getting a good price. If a packer buyer should ask how the cattle have been fed, we try to keep away from saying or doing anything that would keep them from giving the worth of the cattle. If a man wants to maintain his business he must be fair, it has been my experience, and he must be fair with the people he deals with every day and we do not over describe any feeding of cattle as to which we take other people's words. By advertising I mean newspaper advertising, billboard advertising, and possibly handing out a memorandum book or a pencil to some one who was not a customer. I regard advertising of value only in reaching possible new customers. Advertising, as I have heard it defined here, has very little connection with established trade. If I did no advertising at all it is my opinion that from 60% to 75% of my established trade would continue to come to my firm. I regard it as having some value in connection with established trade, but little. Our firm expects to get some new business from the use of the market circular but I would hate to depend on my future trade from what business I would get from the market circular. I do not think that the market circular in the case of my firm could be dispensed with without the loss of business. There would be a reduction in cost of operation if all the market agencies at the Kansas City market should band together in the dissemination of market information and in the elimination of the dissemination of information by the individual firms. The cost would be much lighter if there were only one market report sent out by all the firms, but the effect to the individual firms would be damaged by so doing.

Customers expect to hear from the people that sell their
1462 livestock and want their information on the market and their views on the market. The establishment of the clientele of our own firm is due primarily to the fact that we have rendered satisfactory service, have obtained satisfactory prices, and have handled livestock satisfactory in other ways. There are many ways of satisfying the customer other than in obtaining prices merely, humane handling of livestock in the sorting, yarding, feeding, and weighing. Our firm places no limit upon the

amount of appraisal work which it does. We do as much of that work as time will permit and as in our judgment is beneficial to the trade or to our business. We refuse requests for that service. If we did not we would be out all the time. We do not perform this inspection appraisal service for all of our customers, but we do for more than 50% of them. This does not include the truck in business. It refers only to rail business. We do very little appraisal work for our truck in business. Practically all of our expense for appraisal and soliciting work is on the rail business. In some cases when we decline an invitation to come out and look at cattle we don't get the cattle. Generally, somebody else goes out to see them. I think that shippers ask other firms at this market to come out and look at the same cattle that my firm has looked at, however, this is not true in a big percentage of the cases. It occurs occasionally. If we should curtail our appraisal work materially the affect on our business would be bad. I think that I would lose a portion of the business that I could hold by going out and giving them this service. It is my observation that the market agencies at the Kansas City market are doing more of this appraisal service as the years go by. If some firms are more active along this line it makes it necessary for other firms to become more active, to an extent. Within recent years and within recent months my firm has been reaching out more extensively for business. It has gone into new territory. This is not peculiar to any particular locality. Our firm has been going out more this year than it did last year because we have increased our force by doubling the two firms together, organizing the company, and consolidating the two firms and in increasing our business necessarily we are having to increase this work in recent months. The market agencies of Kansas City find it necessary to reach out further into the territory of other markets in order to protect their interests and the commission business at
1463 Kansas City against the inroads of other markets. In my opinion the action of the market agencies at Kansas City in discontinuing free subscriptions to the market paper has not only been justified but was necessary under the present rate of commissions. It was too expensive. I do not think that its discontinuance has had an adverse effect upon our business. Our firm sets aside no particular portion of its gross income to be expended for getting new business or for holding old business. We spend just as little money as we can get along with on that portion of the business. We have to do about so much business and there is not any use of us setting an amount aside to take care of that. We have to do what we think is necessary to try and get all the business we can. Sometimes it costs more than the gross income from the business. We have done business at a loss and a number

of other firms have done business at a loss more than one year. I don't believe there is a commission firm on the stockyards, to my best judgment, that has not at some time done business for a whole year without getting a dollar out of it. There are many reasons for these failures to make money. A commission firm which has a local business or a local territory from which it receives much of its business may have that business destroyed because of the total crop failure. The reduction in receipts incident to the failure may reduce the business to a point where it will not pay expenses. A firm whose business is pretty well scattered is not so much affected in this way. A firm which loses money because of a drought hopes that the territory will be better supplied next year, will have a crop next year, and they do not feel like releasing all of their organization, or letting their organization go to pieces, and for one or two years' time they will do business at a loss trying to maintain their business and to hold their force intact. In my opinion the business of a majority of the firms is from certain territories. A few of the larger firms draw their business from a larger territory. Practically all of the commission men operating on the Kansas City market receive stockers and feeders from the wide range territory. There is always some of this business coming to market. Crop failures or any other disaster like a drought would not ordinar'y affect the whole territory. The bulk of the fat cattle are received the first three days in the week.

1464 REDIRECT EXAMINATION

Packer buyers are good judges of cattle and good judges of ment. If I am silent about the way in which cattle have been fed, or give hearsay information, or evade an answer to a direct question, that has an effect on his bid as compared with a situation where I come out voluntarily with a positive statement that the cattle have been properly fed, have been fed corn over a period which would ordinarily give the beef a good quality. I should say that the ability to give the information to the buyer when the facts justify it raises the price sufficiently above what it would otherwise have been to pay the commission charges and the expense too. In 1931 I had according to Exhibit 115-A a per car income on my straight car single ownership rail consignments of cattle of $17.94 per car on the average. To this there was attributed an expense of $11.66. With respect to truck-ins there was an income of $20.15 on a carload equivalent, against which there was charged an expense of $47.83. I know that this is not the cost in my business. I don't know how they could have arrived at anything so far from being fair and just.

It is unreasonable. In my business the drive-in business is largely fill-in business. It utilizes time at the market that might not be otherwise utilized.

RECROSS-EXAMINATION

In a great many cases, but not in every case, I can get 25c per hundred pounds more or something more for the livestock than if I did not know how it had been fed. In the majority of cases the buyers take the way livestock has been fed into consideration and will pay more for the stock if they know that it has been properly fed. I did not say that I could raise the 25c every day on top of what the price was the day before. It merely means that I can get what the livestock is worth. Judgments vary some and that makes the difference in the trading margin on cattle. One buyer will bid 25c and ofttimes 50c less than you sell your cattle for.

G. T. LAIRD, a witness called by the respondents, after being sworn, testified as follows:

I am connected with Laird Brothers Livestock Commission Company, one of the respondents here. I am one of
1465 the owners of the business. I have not heard all of Mr. Stuart's testimony, but I have heard quite a lot of it. I heard his testimony concerning the classification of business getting and maintaining expenses. A larger percentage of our cattle business is truck-in business than is the case with Mr. Stuart's business. My brother and I have been active in the development of the truck-in end of our business. I think that the truck-in business is more expensive to handle than the rail business. Our expense for circulars or market letters in the year 1931 was $2,924.43, including postage. We have what might be termed three different lists, a weekly list, a bi-weekly list, and a monthly list. We send market letters to some of our drive-in customers once a month. Our drive-in business has been increasing. Seventy-five per cent of our mailing list represents rail customers. About 75% of our travel is incident to appraising and servicing livestock for old customers and about 25% of it devoted to soliciting new business. The Exchange as an organization has done no soliciting for our firm. We make our trips to the country the latter part of the week. We are not as busy selling livestock the latter part of the week as we are the first part. We are busy in the country during the latter part of the week. We employ no regular solicitor. Soliciting is done by the salesmen and owners of the firm. Outside of automobile expense and

other travel expenses we would not save anything if we stayed at home the latter part of the week. So far as the time of our men is concerned, we sustain no additional expenses by reason of the country trips. The additional expense is in the travel and automobile expense.

CROSS-EXAMINATION

Our firm has been active in its efforts to attract drive-in business since the drive-in business began to develop. We go on appraisal trips for truck-in customers the same as we do for rail customers. The trips are made on Thursdays, Fridays, and Saturdays. Our whole force does not go. One or two of us go, but we do not go every week-end. Our trips are not limited to the requests made. If we were to discontinue our appraisal work we would still need the same personnel which we now employ. The purpose of our going to the country is to see a man's stock and to give him an idea as to about what it will sell for on the market, or what like livestock sold for on previous days
1466 or a few days past. We advise our customers as to the value of their livestock before they ship them to market. If we did not do this other commission man would go to see them, appraise them, and get the business. Other firms on the Kansas City market are very active in carrying on appraisal work. They go out into the same territory which we visit and sometimes look at the same livestock which we look at. We get most of our requests for appraisal service through letters. Sixty percent of our customers ship to us exclusively. We revise our mailing list once a year. We have about four thousand names on the three lists. The newspaper reports on market conditions and price do not go into as much detail as our market letters do. My brother and I manage our firm. We do try to hold down our expenses incident to advertising and solicitation work as much as we can. There has been no retrenchment with respect to these expenses in the last year or two. We have made changes in our advertising policy and tried out new methods and we have discarded old methods in order to determine what the effect would be on our business. We have tried reducing our mailing lists and our business declined. We have tried reducing our time going into the country and our business declined. We find it necessary to keep up these activities in order to hold our business. If other firms acted in concert with us, I think it would be hazardous to our customers. When we reduced our mailing list and reduced our time in the country somebody else got the business, we didn't. We get cattle, hogs, and sheep.

J. B. WALLACE, a witness called by the respondents, having previously been sworn, testified as follows:

CROSS-EXAMINATION

The losses experienced since July 1, 1924, covered by the bond requirements under the Packers and Stockyards Act were $5,222.14 paid on account of the George E. Cole Livestock Commission Company in January 1925. The next loss occurred in March 1927. The claim arose in connection with the Ben L. Welch Livestock Commission Company and was for $4,192.34. That claim has been entirely wiped out and we saw fit to continue a bond for that firm so that they could continue in business.

1467 MRS. LOUISE MCGREW MOFFETT, a witness called by the respondents, after being sworn, testified as follows:

I am the widow of T. S. Moffett, formerly of the Moffett Livestock Commission Company. I am now one of the owners of the business known as the Moffett Livestock Commission Company. The business is a partnership. The partners are Mr. Baker, Mr. Barney Metz, Mr. Bradshaw, and myself. In 1931 Mr. Baker and I were equal partners. My husband died on December 22, 1930. I had been very active in helping him in his business affairs. I have been with him in his ranch and stock business 18 years. In February 1923, I started to go to the livestock office and went with him every morning when he went, and came home whenever he did. We worked together in all those things. After 1923 I was constantly with him at the time he was in the office. During the early part of the week he wanted to get to the office at about 5 o'clock in the morning. The latter part of the week, not so early. I always went with him to the country to appraise cattle and to visit customers, if he went in the auto, and I sometimes went with him if he went by train. I always took him in the auto because he did not drive the car. I was acquainted with practically all of the customers of the Moffett Livestock Commission Company. Mr. Moffett had extensive ranching and stock raising interests. He operated ranches for himself and also for Moffett Brothers and for another partnership. Those ranches are located in Comanche, Barber, Pratt, Harper, Anderson, Meade, and Logan counties, Kansas, and in Pittsburgh County, Oklahoma. He had some farms also in Clay County, Missouri. Managers were in charge of the majority of these ranches. We operated some of them ourselves. Mr. Moffett had extensive acquaintance with people, particularly the livestock growers in the counties where these ranches were located. I

had about the same acquaintance which he had. From 1923 until the date of my husband's death I helped out in the office, especially with writing to the customers. I was executrix of his Missouri properties. My sister, Mrs. Grace Torrance Clark, was executrix in Kansas. We had always kept an office for ranch business adjoining the office of the commission company. After Mr. Moffett's death we moved into the commission company's office, occupying the smaller of two rooms. The room
1468 which we occupied was not paid for by the commission company, the estate paid the rent. During my husband's lifetime and during the time since his death commissions on the livestock belonging to him or to his estate were paid to the commission firm just as they would have been paid by an outsider. After my husband's death I made application to the Exchange for membership and was granted one. Before Mr. Moffett's death he had contracted with Mr. Baker to engage salesmen and office help for the year 1931. He died suddenly on the 22nd of December. I agreed with Mr. Baker to take a half interest and half responsibility provided I was admitted to the livestock exchange. Had we not done this the people employed by Mr. Moffett would have been thrown out of employment. I purchased Mr. Moffett's membership. The Exchange gave we also the privilege of soliciting. I have another membership which belongs to the T. S. Moffett estate. I personally supplied half of the working capital and own half of the furniture and equipment. After Mr. Moffett's death patrons were advised of his death and that I would continue in business along with Mr. Baker. It would be difficult for me to give the exact time I devoted to the business. My sister's hours and my own hours were longer than most. We worked from a quarter of seven until seven at night many times, all day Saturday, all day Sunday. I wrote hundreds and hundreds of letters to keep Mr. Moffett's trade and always kept in touch with his customers. Whenever they came in I conferred with them. We have done in our office a great deal of the stenographic work of the firm. In the first part of the week when the rush is on I do a great deal of billing, and if necessary some account sales. I help Mr. Henderson out whenever he needs it, especially on Friday and Saturday with the balancing because our bookkeeper does not come down on Friday and Saturday. My sister has helped out greatly with this work at times.

Since Mr. Bradshaw and Mr. Metz have become partners in the business I have continued to help in the office work and have performed other duties as I did in 1931, and have even done more work. Only two or three times have I charged the gasoline and oil and tire repair expense of trips to the commission

business. I have made no charge on account of the car and have charged nothing for depreciation.

1469 CROSS-EXAMINATION

I did not go to the office with Mr. Moffett or make trips with him to the country because of his health. He was never sick a day in his life until that on which he died. I had no regular position in the office but helped out when needed. This applies both to the ranch and stock business and the commission business. My work consisted in writing letters, keeping books, figuring tickets, and doing whatever needed to be done. A great many of the letters would be composed by me. My sister helped me with them. My sister did not have a regular position in the office. She was helping Mr. Moffett, as I was. I am executrix in Missouri. I assist my sister, Mrs. Clark, in her administration of the properties in Kansas. Mr. Moffett owned two ranches himself. He was interested in from 21 to 25 farms and ranches. Some of these were relatively small farms and some ran up as high as 20,000 acres. Neither the estate nor the partnership estates are settled yet. Since Mr. Moffett's death I am operating the ranch over in Birmingham, Missouri. That takes a good deal of my time but not as much as it took in 1931. I do a great deal more work in the commission business than I did before Mr. Moffett's death, more soliciting and visiting in the office. Mr. Baker is buyer for our firm. Mr. Metz sells cows and calves and Mr. Bradshaw sells steers. They and I manage the business. I have as much work in connection with the commission business as I did before Mr. Metz and Mr. Bradshaw came into the business. I do soliciting when I go to the country. When I go to the country I take a description of the cattle and let the salesmen in our firm pass upon it. The farm managers and ranch managers help me in going around and looking at cattle to be appraised in their own neighborhood. The partnership estate with respect to which I have been spending a part of my time outside of the commission business has only been the T. S. Moffett estate and the Moffett Brothers estate. There are about five farms in the Moffett Brothers estate. The largest of them contains about three or four thousand acres.

REDIRECT EXAMINATION

I think I have held a great deal of Mr. Moffett's trade. These former customers consult with me about where they should
1470 sell their cattle and how they should finish them and whether they should go to Kansas City to be sold or

should go to other markets. They visit with me in the office and talk to me personally about it. I spend more than half of my time in connection with the commission business.

RECROSS-EXAMINATION

I never sell or buy livestock in the yards. In 1931 I left the management of the commission business pretty largely to Mr. Baker. The four partners have now designated him as manager. The salesmen give me information as to when livestock should be shipped to market. I rely upon this information and relay it to the owners.

REDIRECT EXAMINATION

The firm owns no automobile. The three members of the firm have their automobiles and use them. They charge none of the depreciation of these automobiles to the firm. Mr. Baker has always had and used his own car. Whenever he made a trip, he would charge up the gas and oil to the firm, and sometimes he did not even charge this.

We got out market letters in 1931. We used our own mimeograph and our own printing machine. I have economized all I could. It was necessary to be careful. Our expense on account of postage is unusually low. We try to be awfully careful of all of our expenses. If it is not a very busy time, we skip a week in the market letter. That makes some difference. We do our own mimeographing in the office. We print practically all the circulars we send out.

RECROSS-EXAMINATION

Mr. Metz, Mr. Baker, and Mr. Bradshaw each own a larger interest in the business than I now own.

(Whereupon the witness was excused.)

Respondent's Exhibit 256

(Whereupon respondents introduced in evidence Exhibit 256, the same being the Drovers Journal Yearbook covering the year 1931, published by the Chicago Drovers Journal.)

1471 Respondents' Exhibit 257

(Whereupon respondents introduced in evidence Exhibit 257, the same being certain copies of amendments to tariffs on file at other markets, and offered as a supplement to Respondents' Exhibits 19–A to 19–E, inclusive.)

Respondents' Exhibit 258

(Whereupon counsel for respondents requested that it be agreed between respondents and the Government that such information as is contained in the annual reports of respondents for 1931, known as form P & S–3, be available for the use of either party, and that such information be incorporated in the record at any stage of the proceeding by either party upon notice to the other parties. It was stated that this arrangement was desired in order to avoid encumbering the record with voluminous reports. Counsel for respondents stated that he was aiming to get into the record a statement of the gross proceeds of livestock sold and purchased, as indicated upon these reports for the Kansas City market as a whole. Counsel for the Government stated that he would recommend that such a compilation be made and introduced as an exhibit in the record. The examiner recommended that the proper authorities in Washington furnish the desired data and that it be incorporated in the record just as if formally introduced at the hearing.)

Mr. J. H. TEDROW, a witness called by the respondents, after being sworn, testified as follows:

REDIRECT EXAMINATION

I am the same J. H. Tedrow who testified at the former hearing in this proceeding held in December 1930. I still represent the Kansas City Livestock Exchange as attorney in connection with transportation and traffic matters. I am at the head of the traffic department of the Chamber of Commerce at Kansas City, and I am attorney for the Chamber of Commerce in matters involving freight rate proceedings. As such I come into contact with the traffic departments of exchanges, boards of trade, and chambers of commerce at other cities, such as
1472 Omaha, St. Louis, Chicago, Sioux City, and Denver. I have never heard of any large livestock market which was not represented in an organized way for handling traffic and rate matters affecting the livestock industry. In my judgment, a market not so represented would suffer. Different markets, different cities, and different sections of the country strive to protect their freight rate positions against rates which would create undue, unfair, or preferential advantage to other competitive cities, sections, and markets. The Interstate Commerce Commission permits and generally receives the presentations made on behalf of individual markets, cities, sections, and communities.

At the last hearing I testified concerning the general investigation of freight rates which was then being conducted by the Interstate Commerce Commission in pursuance of what was known as the Hoch Smith Resolution, adopted by the Senate and House, instructing the Interstate Commerce Commission to conduct such an investigation. This investigation is known as Docket 17000. One part of it known as part 9 deals with livestock. The proceedings in that case were initiated in 1927, hearings were held in 1928, final argument was had at Washington before the Interstate Commerce Commission in October, 1929. I stated at the former hearing that the case was pending. Since that hearing the case has been decided and many and notable changes in the livestock rate structure have been made. These changes affect this market. (Respondents' Exhibit 260 was offered.) One of the most important rate provisions we had at this market previous to the Commission's decision, effective January 25, 1932, was the market privilege with change of ownership. Under that provision which was generally carried in the railroad tariffs livestock could come to the Kansas City market at the Kansas City stockyard and be sold, provided however the identity of the shipment was not disturbed, that is, the cattle changed around, through hogs brought in or through cattle brought in, and go out on the balance of a through rate to destination. This meant a considerable saving in freight charges to the producer. Livestock could be purchased on the Kansas City market by buyers for eastern slaughtering points and instead of going out of Kansas City on the flat rate it would go on the balance of the rate from origin to destination, at a considerable saving.

1473 It was our contention in this livestock proceeding before the Interstate Commerce Commission that that privilege was a great advantage, not only to this market but primarily to the producer, because it enabled him to net more for his livestock. We made a plea for the marketing privilege with change of ownership retained. The report of the case which was made early in 1929 proposed to continue that privilege, but the final decision of the Commission, which is found on page 112 of Respondents' Exhibit 260, put the word "out" after the word "with" and made it read "without" change of ownership. That meant that when livestock was sold on the Kansas City market for delivery to eastern slaughtering points there could not be change of ownership here at the balance of the through rate. Combination rates would have to be paid and this resulted in the strange illustration set forth on map No. 259; this map is Respondents' Exhibit 259.

On the Santa Fe west of Kansas City, about 7 miles from the stock yards, is located a railroad stockyards by the name of Mor-

ris, and south of Kansas City on the Missouri Pacific there is a stockyard which is called Prospect Yards. These are about 5 miles from the Kansas City stockyards. The railroads provide transit privileges on livestock at those points which permit change of ownership. The eastern order buyers or anybody that wants to ship livestock away can go out to those outlying yards, buy the livestock and ship it on at the balance of the through rate, amounting to savings of as high as 25¢ a hundred pounds against what they get out at the Kansas City stockyard. What is true with respect to the Prospect yards and the Morris yards is also true as to those located at Olathe, Kansas, which is about 20 miles south and a little west of Kansas City on the Santa Fe and the Frisco. It is also true at Emporia, Kansas, which is about 150 miles west of Kansas City on the Santa Fe. Since the advent of these new rates we have found that we are entirely out of line with these small outlying railroad stockyards and the stockyards at Kansas City is unable to compete with them on anything like a rate parity on traffic which is going through to its ultimate destination in the east. (Respondents' Exhibit 261 was offered in evidence.) Exhibit A of this exhibit consists of five pages. On page 2 is found Vinita, Oklahoma. Kansas City is the largest stocker and feeder market in the world. The rates apply
1474 to cattle. The same rates also apply to sheep, double deck.

Prior to January 25, 1932, the rate on stocker and feeder cattle from Vinita, Oklahoma, to Bloomington, Illinois, was 52¢ a combination of the rate of 25¢ to Kansas City and 27¢ beyond. On January 25 these rates were changed. The through rates become applicable on stocker and feeder cattle and were 43¢ to Kansas City. The rate via the Kansas City market became 56¢, or 26¢ to Kansas City and 30¢ beyond. This made us 13¢ out of line as against the through movement. Prospect or Morris or Olathe, Kansas, or any one of a large number of points out in the country where there are railroad stockyards which handle these cattle on a through fat-cattle rate enjoyed a rate of 50¢, approximately 6¢ a hundred less than the same service accorded via the Kansas City public stockyards. Albuquerque, New Mexico, is the seventh point on sheet 2 of the exhibit. Formerly the rate on stocker and feeder cattle from Albuquerque to Bloomington was 84½¢. A through rate of 61¢ became effective on January 25. The rate via Kansas City is 87¢, or 26¢ more than the through rate, while the rate if this stock should be brought into Prospect or Morris or Olathe would be 72¢, or 15¢ less than the same service via Kansas City. This last figure is not shown on the exhibit, but I have calculated it. Respondents' Exhibit No. 262 carries "B" at the top. The showing is much the same as that set forth in Respondents' Exhibit 261. The rate from Purcell, Oklahoma,

via Morris, Kansas, to Booneville, Missouri, is 33¢. The same rate applies via Prospect. This rate is 25½¢ less than the rates via Kansas City. The rates via Kansas City are 58¢.

All the other illustrations given on this exhibit are the same. I do not, therefore, refer to them. The next exhibit is Respondents' Exhibit 263, designated at the top "C," a one page statement in which I have taken rates on stocker and feeder cattle from numerous points of origin in Kansas, Oklahoma, Texas and Colorado, to Liberty, Missouri. Referring back to Exhibit 259 you will see that Liberty, Missouri, is about 15 miles northwest of Kansas City. Stocker and feeder cattle will move from Del Rio, Texas, to Liberty, Missouri, for 51¢ over a distance of 947 miles.

Coming to the Kansas City Public market they would travel
1475 931 miles at a rate of 61¢. The witness then proceeded to recount various rate differentials prejudicial to Kansas City.

Exhibit 266, designated by the letter "G" is a comparison of our position, former and present, with St. Louis. The rates from Altus, Oklahoma, to New York via St. Louis are $1.09½. Under the rate change it becomes $1.08 via St. Louis; via Kansas City it used to be $1.06½, or 3¢ less than via St. Louis. Our rates have now become $1.22. We are now 14¢ out of line with St. Louis, whereas formerly we were almost on an equality.

Denver has long had a liberal transit privilege. Their livestock can be sorted, concentrated, graded, held for ten days, and then go out on the balance of the through rates. We have never enjoyed this privilege. The Interstate Commerce Commission's decision enlarges Denver's privileges. Exhibit 267 is a comparison of what happened when we try to compete with Denver in drawing livestock out of the district west of Denver. Livestock originating in Salida, Colorado, or in that neighborhood will go to Denver at 31¢ a hundred and move to Chicago for an additional 38¢, a total of 69¢. The charges via Kansas City are a combination of 53¢ in and 40¢ out, or a total of 93¢. Kansas City is 24¢ out of line with Denver. The balance out of Denver is 38¢. In shipping hogs out of the Missouri River to the eastern destinations for part of the journey we have to pay on a 24,000 pound minimum, that is, for the part of the journey up to the Mississippi River, while St. Louis and Chicago get their double journey through at a 23,000 pound minimum. The result is as shown in the right hand column, a penalty against us of $5.95 a car.

Exhibit 270 consists of a map and attached sheet and was prepared in mid summer, 1928, and introduced in the general livestock hearing before the Interstate Commerce Commission. The first sheet of the exhibit is a statement of points with tariff references at which there are concentration privileges in this

western territory. Morris, Kansas, is designated. It is 7 miles from the Kansas City stockyard. Topeka is 67 miles west of Kansas City on the Union Pacific, Santa Fe, and Rock Island. Livestock originating at Topeka, Lawrence, and Manhattan, and at any points along the Santa Fe out in that territory can come into Morris, be unloaded from cars, sorted, sold, be loaded into other cars and be forwarded to Chicago, St. Louis, New York, or any other points at the balance of the through rate.

1476 The Kansas City public market does not enjoy the privilege.

Exhibit 271 was prepared by me in June this year. It shows the additional points which have received the concentration privilege since those shown in Exhibit 270 were assembled. Twenty-two thousand pounds of stocker and feeder cattle moving from Hereford, Texas, to Bancroft, Iowa, through the Kansas City stockyard, would carry a rate of 74¢ a hundred, amounting to $162.80. These cattle moving via Morris, Kansas, would carry a rate of 47½¢ a hundred, or a total of $104.50. The differential against the Kansas City market is $58.30 on the car. Had these cattle originated at Clovis, New Mexico, the rate via Morris would have been 49½¢ per hundred and the total charge would have been $108.90. Via Kansas City the rate would have been 74½¢ and the total charge $163.90, a differential against the Kansas City market of $55 per car. If we succeeded in effecting a savings on a car of stocker and feeder cattle moving from Clovis, New Mexico, through the Kansas City market of $55 per car, that amount would be enough to pay the 2¢ assessment on 2,750 cars.

CROSS-EXAMINATION

The farmer who ships his livestock into Kansas City pays the local rate from his home station at Kansas City regardless of whether he has through billing or not. That freight charge is paid out of the proceeds of the livestock by the commission man who sells the livestock.

All livestock markets, generally, are in competition with one another. Anything that we can do here to put our market a little nearer our competitors means an enhancement of price and values of livestock that come to Kansas City. We hope to get the order of the Interstate Commerce Commission changed. In the matter of rates such as I have been describing, Kansas City is no worse off than other of the so called Missouri River markets. The Missouri River markets, namely Sioux City, Omaha, St. Joseph, and Kansas City, are all in the same boat. St. Paul is a little better off than we are because they have some concessions on out bound shipments, or a proportional rate basis. Chicago and St. Louis are better off than we are because they do not need these market

privileges so badly. There have been attempts to get
1477 through rates from west to east on livestock, but they have been unsuccessful. The situation at Denver has just grown. It became established in the early days and has been continued. When the discriminations are removed which work against us, as in the case of Denver, Morris, and Prospect and country points, we will be able to get our fair shares of the business and I apprehend that it will increase our receipts. What we want is a situation which will enable the public livestock market at Kansas City to do business on an equality with Prospect and Morris.

REDIRECT EXAMINATION

We hope that such order as might be issued would relieve the situation which is prejudicial to the volume of receipts at the Kansas City market. That hope, up to date, remains unrealized. My hope is like that of any lawyer who believes in the soundness of his case and in the justice of the judgment of the tribunal that hears it, he expects to win. Whenever you put burdens on a public market you decrease the value of livestock at that point. This decrease in turn is reflected at concentration points and the nearby places. Values are forced down. It is an endless chain. Freight charges and other costs of marketing on the terminal markets have a tendency of driving livestock away from these markets to favored points.

Mr. C. E. BLOMQUIST, a witness called by the respondents after being sworn, testified as follows:

I am a resident of Kansas City, Kansas. I am connected with the firm of Martin, Blomquist and Lee Livestock Commission Company. I have been connected with the livestock industry for 31 years and with the commission business for 12 years. Before that I was employed by the Fowler and Armour Packing Company. I worked in the hog yard. At present I have charge of the hog department of Martin, Blomquist and Lee. I have direction of from four to six men all the time. I handle the correspondence growing out of the selling of most of the hogs that are consigned to our firm. The yardmen at times help with the selling, in the sense that they are sometimes out on the market getting the trend
of things. When I am in the alley with a buyer and wonder
1478 what is going on on the outside, whether the market is getting stronger or whether it is weakening, I use the yardmen to find out. We all work together. Ninety percent of my trips to the country are made upon request. Our firm has within the last year or so done quite a bit of stock pig business. We buy pigs here on the market. Recently there has been a large num-

ber of pigs from the country. Last year we purchased some 300 double deck carloads at country points. Most of this buying last year was done in South Dakota. I made some eight or ten trips up there by train and airplane in order to get up there and get the business done and get back. Those pigs went to all corners of the United States. When I am in the country we get a good deal of information about the character, integrity, and standing of the men in the country. We also learn something of truckmen. Our mailing lists are revised each day. It is composed of from 75% to 85% of people for whom we do business. Ninety percent of the people on our mailing list have sent us consignments within the last two years.

According to Exhibit 114–63, the blue audit of our firm for the year 1931, an item of $2,678.53 stands opposite "Newspaper Advertising." This advertising is carried in the Daily Drovers Telegram. We have used that medium in keeping the people in our territory informed. We feel that we should help support the paper because it was sent to a good many of the customers of this market. We felt an obligation to patronize this newspaper and give it advertisements because it was the Kansas City livestock market paper. I think it would hurt our market very much if the paper were to be discontinued. The blue audit contains an item of $1,867.17 for novelties, notebooks, and things of that character. We distribute a large notebook 3½ inches by 7 inches. These notebooks are used daily by most of the cattlemen and regular shippers. There is an item of $1,561.20 for signboard advertising. We put up signboards along the roads leading into the city. The item of $933.01 under "other expenses" was general in character. We do very little advertising at fairs. There is an item in Exhibit 115 of $6,456.95 for "travel." I think that from 75% to 80% of our travel and travel expenses in the country result from trips for the purpose of consulting with our shippers as to the value of their cattle, as to whether they are ready to go to market and as to what they will bring on the market and whether
1479 it is better to market at present or wait. There are many more trips in connection with the cattle business than there are in connection with the hog business. The expense per head on account of hogs is quite small. It has been very essential in the last three or four years that we keep in close contact with our customers in order to be sure about the title of cattle we handle. Had we not done this, either we or our insurance company would have sustained some heavy losses. The audit shows $7,939.55 allocated on account of the efforts and time of owners and employees spent in the country. We employ no solicitors; 95% of our work in the country is handled by members of the firm. Our cattle

buyer buys cattle on the yards and goes into the country occasionally. He is in the yards about 80% of his time. We should have to employ him if he did no soliciting. Our firm sustains no additional out of pocket expense by reason of the time that our people devote to work in the country. Government Exhibit 115, page 31, indicates that 30.9 percent of our total gross income had been devoted to business getting and maintaining expense. Under the superseded order of the Secretary of Agriculture an allowance is made for business getting and maintaining equal to 10% of the gross income. This would mean in the case of our company the elimination of at least $21,000 in expense for the year 1931. The elimination of two-thirds of the expenses so classified would have seriously impaired our business and would have affected the services we render our customers. The elimination of this amount from our expenditures by our firm alone would have resulted in a loss to our firm of customers. If all firms at this market stopped sending out this information, but other firms continued to send it out and continued to service their trade in this way, it would affect the volume of business at this market as a whole very much. We lost a good deal of our Nebraska business when we quit sending out the market paper. Our firm lost business to market agencies at Omaha, St. Joseph, or other places where the commission firms furnished them the daily market paper. I am sure that our advertising devoted exclusively to business getting would not total 10% of our gross income. I was one of the members of the respondent firms who met in connection with the preparation of Tariff No. 3, which became effective May 23, 1932. I was
1480 particularly interested in the tariff applicable to hogs. Our first consideration in working out that tariff was the price of hogs, compared to the price of other livestock and other commodities. The producer of hogs was getting a very small net return and we thought we should go as far as possible in order to help him out. Another competitive factor was direct buying. Inasmuch as producers were getting very little out of their hogs, direct buying had more of an appeal to them than before. We felt that we should help him in both ways. All of the respondents including the Farmers Union Commission Company and the Producers Commission Company, had representatives at meetings where there was a general discussion of the formulation of the new tariff. The first tariff that was suggested contained no clause requiring that plural consignments of hogs should be considered on the basis of the number of head in a single carload of one consignment. It is my understanding that Mr. Hobbs of the Farmers Union suggested that the schedule would be satisfactory to them if a limitation on a carload basis be established in determining

the total headage in respect to plural ownership consignments of hogs. My firm had been applying the tariff that we had filed correctly. I was not personally advised of the change made at the suggestion of Mr. Hobbs before our firm filed this tariff. I was under the impression that the straight rate applied no matter how many carloads were delivered in one consignment. I was a member of the committee that made these rates and it had been decided in committee that the rate would apply no matter how many cars or head were in the consignment, but in a final meeting, evidently, of the directors of the Exchange, or somebody, this was changed and it had not been brought to my attention. I did not attend this meeting. I am not a director of the Exchange. I do not know that it was a meeting of the directors. I know of no rule of the Exchange which relates to this particular tariff. The tariff was subsequently filed by our firm. We had sold stock for all of these people. We had sold for John Endorf, possibly 100 carloads. We had sold stock for the Randolph Farmers Union and the Frankfort Farmers Union, but not as much as for Endorf. I regretted that I had made the mistake and did all in my power to rectify it.

1481 CROSS-EXAMINATION

I have been a partner in my present firm for about five years. We have the same force of employees and assistants in the hog alleys as we had in 1931. I have an employed assistant who helps sell and from two to three yardmen in addition. The fifth yardman is employed during times of large volumes of receipts and in periods of light receipts his services are dispensed with. In 1931 we paid a party on a per head basis to bring our hogs over from the unloading chutes. For the past 4 months we have employed a regular man to bring them over. He works on a salary. The per head charge for the driving service was 3 cents a head, I think. For the first part of the year we paid 4 cents. We reached the conclusion that it would be more economical to hire a man on a salary basis than to pay for the driving on a per head basis. About 90% of the time of this man is spent in bringing drive-in hogs over and about 10% in helping in the alleys. He goes to work at three o'clock in the morning. We pay him $125 a month. In connection with the determination of the financial condition of the owners in determining whether the livestock is unencumbered, I should like to recite a particular case. One of our customers lived at Miltonvale, Kansas. We had always considered him a first-class man of high character. One of our men was called into the vicinity to appraise some cattle. He obtained the information that this man had recently gone wrong.

The very next week we received four loads of cattle from him and he asked for the proceeds from them at that time. We refused his request and found out that the cattle were mortgaged either one or two times. We positively thought that had we not had that information, either we or our insurance company would have been out the total proceeds of those cattle.

We have a list of 20,000 names of which from seven to nine thousand are active. We keep the inactive list merely as a matter of record and in order that we may not throw away something that might be of value to us later on. We send no circulars to our inactive list. We discontinue their circular until they ask for it again or until we think they need the information. We do this in order to keep the cost down as low as we can. We hire our circulars printed. About three or four years ago we
1482 discontinued sending out the market paper from the Kansas City market. We found the next year that many of our customers on the border line territory, as we call it, in southern central Nebraska, where it was just as easy to go to the other markets as to come here, favored the firms at the other market from which they had been receiving the paper the year around. This statement applies particularly to Omaha, but I think we lost some business to St. Joseph, though I am not sure of it. The personal element and the character of the service rendered is very largely the primary element that draws business.

Our firm makes very few trips merely to solicit business. No man goes to the country except upon request to see cattle. Those requests are made by letter, by telephone, or in person. Such service is a factor in helping our customers and we feel that we have to keep up that kind of service. If we did not render it somebody from our market or another market would. Business would drift away from us to others, or to other markets. I was not chairman of the committee on hog rates, I was merely a member of it. The other members were Mr. Wolff of the Producers, Mr. Garrison of the Farmers Union, Mr. West of the Cassidy Southwestern, Mr. Canon of the Dixon Commission Company, and Mr. Byers of Swift and Henry. I am giving these from memory, I think the statement is correct. The committee formulated the hog tariff substantially as it is set forth in Tariff No. 3 except that the question of special ownership did not enter into it. The consideration which caused the break at 130 pounds was the desire to give equitable treatment and not to charge too high a rate on light weight hogs. Mr. Lampe, our secretary and treasurer, filed this tariff for our firm. I think Mr. Lampe was consulted with respect to this schedule. I think Mr. Lampe was present when the schedule was drawn up. I

O. K.'s the hog schedule for our firm. Some one in our firm had something to do with the drafting of the cattle schedule. They were consulted and advised with.

REDIRECT EXAMINATION

We fight all the time to economize as much as possible in the conduct of our business. We exercise the best judgment we have. I recall that at the time that it was suggested that
1483 there be a meeting of the respondents, including the Farmers Union Commission Company and the Producers Commission Company, in regard to a change in rate schedule that there was at that time pending the matter of a conference with the men in the Department of Agriculture concerning rate matters. I was under the impression that the Farmers Union and the Producers had agreed to this schedule, that is in the meeting held before the Secretary's order of May 18.

RECROSS-EXAMINATION

There is considerably more work involved in the selling of truck in hogs than in selling seconds for the reason that we must get the drive in or truck in hogs at the chutes and bring them over and feed them and weigh them, while the seconds are generally sorted and are driven only a short distance into the alleys.

REDIRECT EXAMINATION

The country customer always receives preference over the dealer who sells seconds. The selling of seconds is fill in business.

RECROSS-EXAMINATION

We refuse to handle seconds when we are not in a position to handle them. When the pens allotted to me are full of hogs that have not been weighed, I tell a trader who comes to me asking that I sell his hogs that I do not have pen room for them.

REDIRECT EXAMINATION

Direct buying has cut down the volume of our business.

RECROSS-EXAMINATION

Direct purchases by packers are made in large part from regular shippers and these shippers send all their livestock to these packers. When I worked for Armour there was an arrangement

whereby the packer took all the livestock that one party could get to ship to them. We had certain shippers at certain towns and we always took all the stock that they could buy and ship to us, and there was always somebody in that town trying to obtain consent to ship.

1484 REDIRECT EXAMINATION

Truck-in hogs are a little more evenly divided throughout the week than rail hogs. The big end of our hog rail business comes on Monday, Tuesday, and Wednesday.

RECROSS-EXAMINATION

My assistant is fully competent to sell the better class of hogs. He has been selling hogs for twelve years.

BRYANT POOLE, a witness called by the Respondents, after being sworn, testified in substance as follows:

DIRECT EXAMINATION

I live in Kansas City, Missouri, and am one of the owners of the Poole, Dempsey & Rutherford Livestock Commission Company, a Respondent. I testified at the former hearing. The conduct of my business has become more difficult from a financial standpoint since the year 1929. I would say there has been an increase in the demand for service to shippers off the market in connection with appraisal work. We get out a market report once a week and send it to our entire list of customers, keeping them informed of the condition of the market for that week. In our firm we write a good lot of personal letters at the end of each week to feeders we know have cattle they are ready to market within the next thirty days. Besides that we make trips to the country to see these cattle and advise with the owners about how he is feeding them, what he is feeding them, and the outlook for the future market as well as what they might be worth on the market at the present time. $31.00 expense would represent the newspaper advertising we did in 1931 as shown in Government Exhibit 114–48. We have just a few little items in the Kansas Stockman and the Drovers Telegram. The item of "Circular Letters" includes our weekly market card that we get out to our trade, and it also includes the postage on those circulars. I think the postage on these circulars now is 1½ cents. Ninety to ninety-five per cent of these circulars go to our established trade, people that we do business with at

least once or more than once a year. If we pick up a
1485 name for any reason and add it to our circular list and do not have some reaction from that circular in three months we discontinue the name. If we had grass cattle from a man last August and have not had anything from him for the next two or three months we would drop him. Then when we begin to approach the grass season next August we put him on our list and carry him for two or three months until that season has passed. These letters are informatory in character as to market conditions and our view of it as to our immediate future. Very seldom do we make any reference in our circular bidding for a shipment. We just simply write out the market as it is for that particular week and if we have any reason for any forecast we would likely put that in. The item "Specialities and Novelties" covers books and pencils given to the trade. The item "Travel" amounting to $512.74 represents all the travel expense that I charged up to the business. That part of the travel amounting to $128.20 covering soliciting is entirely too high for our soliciting trips. That should be smaller and the travel covering appraisals should be larger. I don't think we have ever made a trip to the country with the idea of making it a soliciting trip. We either go out on a request of some feeder or we will go to the country to see some cattle that we know are about ready for market or may be made a little loan on. At the time we would be out, this fellow that we went to see might suggest that we go over to see a neighbor. A little part of the trip from neighbor over to neighbor might be called solicitation, but as far as loading up and going to the country for a solicitation trip I don't believe our firm has even done any of it. I do not think soliciting work would run as heavy as $100.00. If we would allow five percent on the real solicitation it would cover it. We do not get any soliciting out of the item covering "Exchange Soliciting" amounting to $831.98, that represents the per car assessments and membership dues that we pay the Exchange. I know positively that at no time has the Kansas City Exchange solicited any business for our firm or for any other firm at the market. I do not consider the expense represented by the $831.98 as advertising expenses. I consider the transportation fund which we contribute to, and which is utilized in the employment of counsel and payment of expenses incident to rate proceedings related to freight rates, to be in the interest of the market as a whole. It is of special interest to the patron of the
1486 market and to the people operating to the extent that the lower you can keep the rates the more business would come to the particular market. It is more or less of a defensive proposition in order to prevent preferences being established

favorable to the market. In our firm we do not employ a man who devotes his time to soliciting. These trips to the country for appraisal purposes are generally taken from Thursday afternoon until the next Monday morning. Our peak days in receipts during the week are Monday, Tuesday, and Wednesday. If we do not utilize this time in making these country trips for appraisal the livestock of our customers it would be idle time to some extent. If we were in town we would use up considerable of our time in writing letters to these people that we would be going to see. We cannot do the work as advantageously by letter as we can by seeing the cattle and seeing the way they are fed. The owner cannot describe the cattle to you like you were there and see them. You cannot see the condition they are in and the amount of flesh that they carry. You would not know a thing about how he was feeding them or what he was feeding them. In selling the cattle if we know that a man has been a good feeder and his cattle prove satisfactory we will invariably call the buyers attention to the last bunch of cattle that we sold him in order to get him to give us a little stronger price for this particular bunch. If we know that the feeder is not a very good feeder we keep still and don't tell. If he finds out that we tell him something that was not right at the time he would not pay any attention to us any more. If we misrepresent it will hurt our future sales. They will buy their cattle some place else or buy ours at a reduced price, and it will prejudice the sale of other customer's cattle. Salesmen positively will not falsely state the situation surrounding the feeding of cattle. In visiting our customers in the country we are able to learn of their standing in the community, their financial standing at the bank, and we have an opportunity to go in and talk to their bankers and find out whether the cattle are mortgaged at home or not, and who has the mortgage. I think that two percent would be very liberal estimate of the total expense of my firm for advertising and other expenses directly incident to getting new business. One and one-half percent would amount to $402.00 and that would cover it big. I assisted in the formulation of the new tariff
1487 which we filed effective May 23, 1932, in so far as it applied to cattle and calves, especially as regards the effect on our revenue. I made applications to this proposed tariff to our firm while this was under consideration. This was prior to the date of the Secretary's Order of May 18, 1932. Representatives of the various Respondent's in this hearing, including the Farmers Union and the Producers Commission Association, participated in the meetings and general discussions of a change in the tariff structure prior to May 18, 1932, and prior to the Conference held in Washington prior to May 18, 1932. Counsel for Re-

spondents, as our attorney, participated in some of these hearings and meetings. It is my opinion that the tariff which was worked out on the headage basis is much better for most parties concerned than the old carload basis with the maximum charge on it. If I fed as much as a carload of cattle and was within a reasonable distance of the market, I would not ship my livestock to a salesman that had not visited the feedlot.

CROSS-EXAMINATION

If a salesman would come out to my ranch to look at my cattle and would not agree with me on my feeding methods I might ship to somebody else that would not know anything about it and that would not be obligated to tell that he really knew that Poole had not fed his cattle like he ought to. The work of selling cattle in the last two years has not changed so much more than we have had more lower markets. It is always harder to dispose of cattle satisfactorily on a continued lower market. It takes more time. We might sell cattle for a man one week and deposit the money and everything would be all well, and the next month or next six weeks, we might sell another shipment and place his money the same as we did before and we would have it entirely wrong. There are more hazards, especially in the last year, then we have ever had from that standpoint. There are mortgages on livestock, and there are banks breaking that did not used to break. I do not think that our firm had any losses from that source in 1931. The only difference that we can really notice on the market is as regards the Farmers Union and the cooperatives. It has been a real problem for some of the old line firms to go out and maintain their established trade ahead of the invasion of those two agencies, one being allowed to rebate on their earnings, and the other one be-
1488 ing able to borrow from the Government. An audit of our expense account will show that we are very conservative in our expenditures for advertising. All the advertising we do will be in the pencils and books and that amount there of $30 some odd, that covers just two or three little newspaper advertisements. We regard that sufficient to keep our name before the public for the class of business that we do. I would say that our firm will appraise 80% of the livestock that we sell. Not all of that is done at the request of the owner.

If our firm should curtail the amount of this appraisal work and the other firms continue to do it, it would cripple us a lot, because the firms would go out and appraise for them and they would ship to the other firms. It is necessary for us to do it as long as anybody does it. If they would make it prohibitive for

anybody at the market to do that, we would not suffer any worse than anybody else would; but if the neighboring market would continue to do it, the market in general would suffer; the receipts would fall off.

If we would sell some cattle from the neighborhood of Manhattan, we would write 15 or 20 different letters that week during the grass season to different parties in that neighborhood that would know about this particular party's cattle, as to what they brought and what they weighed on that week's market. To a certain extent our firm relies upon personal correspondence with customers for the purpose of getting information as well as giving information, in lieu of a personal visit to the country.

It is my observation that feeding methods in different localities are standardized only as regards neighborhoods. It is my experience that their feeding over in Kansas and Nebraska covers a wider variety than one would expect. The packer buyer relies quite a good deal on the locality from which livestock comes to form a fairly accurate judgment in regard to the way livestock had been fed and handled, especially as to periods of the year. Nebraska cattle late in the winter and early spring demand really better prices than they do early in the winter. Missouri cattle late in the fall bring a lot more money than they do early in the summer. It could be that the person who does not avail himself of appraisal service takes the view that the salesman on the market is able to get the full value without having seen the cattle. There could be what we call a "phoney" feeder
1489 who does not want anybody snooping around his place of business. He will get along better than if he had Poole come out and know too much about them. Comparing a load of fat steers which has been sent to the American Royal, and the same load of steers sent to my firm to be sold on the regular market, I would say that our salesman would have the advantage over the Royal livestock judge in placing that load of cattle, in that he would have had all of our information as regards the history of the man who fed them and how he fed them that a judge would not have, if he was judging a particular set of cattle, like the cattle of Dan Casement at Manhattan.

The object of the Exchange in its activities in connection with freight rate cases is to maintain a favorable position for the Kansas City market in its relation to the other livestock markets, and it may have some influence on the flow of livestock to the Kansas City market, to the extent that it does have that influence, our firm participates in the advantage as well as the patrons of the market. The activities of the Exchange are designed primarily to make the Kansas City market as attractive as possible

to shippers. It is its business to safeguard the interests of everyone that patronizes the market and try to keep it a healthy, wholesome place to do business.

There is not a large turn over in the customers of our firm. We will get a new customer through the recommendation of a pleased customer in the neighborhood. In our particular case I would say that is the chief way we get our customers.

I helped to apply this new tariff to our firm's business, and I think I spent some time in getting it changed around so that it would fit our business as well as other firms. The tariff was formulated by a committee and then distributed to the different firms to apply, after these suggestions were brought in and all this information picked up from the different firms. We applied the tariff to our business before we came down to Washington. That tariff was adjusted some after that. The tariff was submitted to us in final form for our approval. Our firm passed on it finally in regard to our filing it. The way we got hold of this particular schedule that we did file was by our working with different firms as to how it would affect their business as compared with our and changing the rate a little here and a little there so as to make our average of
1490 the market effect as nearly as possible a 10% reduction over the old rate.

There was no particular committee of the livestock Exchange which took all these ideas and embodied them into the present tariff. It was just simply a group of members from the various organizations in the yards, including both the Producers Association and the Farmers Union, that worked with this group of men, or you might call it a committee to work out the different charges and apply them to their various businesses. It was the outcome of the work of our whole outfit down there. The bill for the printing of the tariff was absorbed by the various agencies concerned with the thing. The same tariff was printed and passed around for all of them to file. (Whereupon counsel for respondents stated that he would take the responsibility for having the tariff printed and that the charge for printing was charged up and handled as an expense incident to this rate case. He further stated that each firm voluntarily, without any action of the Exchange whatsoever or the adoption of any rules or regulations, saw fit to file it.) All market agencies worked together and cooperated down there to work out this uniform tariff. The group that worked on this tariff would differ from day to day. The result of the work of one group today would go in with a different group tomorrow, and finally this thing was all gotten together and the different charges applied to the

different firms' businesses. Finally we arrived at what we all thought would bring about a 10% reduction over our old rate. After all this information was gathered from all the various firms and everybody had agreed as to what was coming out of these various applications, there would have to be somebody that would dictate it and take it to the printer. I do not think there was but a little time while we were all working on this thing that we did not consult with Mr. Gage about what effect this part would have on it and that part and consulted with him when we were finally through with it as to the merits of the thing. It would be my opinion that Mr. Gage dictated it in the final, or rather, O. K.'d proof of that tariff before it went to the printers. I can positively testify that there was never any committee named by the Livestock Exchange to handle this particular tariff. It grew out of the trip that was made to the Department on their invitation to attend this conference, and

when we came home with the information which we had,
1491 we started to work among the member firms doing business, to try to arrive at something that would be a substantial reduction from our old tariff. We would go up to the Secretary's office with that work, up in the Exchange Building, but there was positively nobody at any time presiding over those meetings as chairman. If I went up there with my sheet, I would talk over with representatives of other firms the results of our application of the tariff. I do not know how much paper we worked up until that thing was got out so that it would average a 10% reduction.

(Whereupon counsel for respondents accepted responsibility for deciding that the tariff was acceptable for final form and ready to be printed, stating that he was working with all these clients, talking, and consulting with them. He stated that it occurred on account of the rate proceeding and, in part, through the willingness of the respondents to make some sacrifice on account of their desire to keep away from further expense incident to the rate proceeding, and to help their patrons by reason of the fact that a depression in livestock prices had occurred since the proceeding had commenced.)

REDIRECT EXAMINATION

Mr. Gage advised me and the other respondents that certain of the rate schedules in the former tariff under inquiry were discriminatory in character, and made the suggestion that a tariff on a headage basis and consignment basis might be the subject of consideration. Various of these respondents started

to work on that basis, and that was the cause of our coming up and going over various rates formulated on that principle. Eventually we reached the result that accomplished for the market as a whole and all agencies as nearly a 10% reduction in gross revenue yield as we were able to accomplish. The rates in respect to hogs were reduced more than the rates in respect to cattle on account of the relatively greater reduction in hog prices than in cattle prices, and on account of the fact that direct marketing was becoming more attractive to the direct shippers. That was more or less affected by the competitive character of the direct buying campaign of the packers around Kansas City. It was the hope that this tariff would meet the approval of the Secretary when it was filed. No rule or regulation was made by the Exchange in connection with this tariff.

1492 A salesman would be in bad repute if he told a packer buyer the steer he was selling had had 120 or 160 days' feed on corn, alfalfa, and cottonseed cake, and it developed after slaughter that the steers had been fed paraffin or vegetable oil, or other substitutes injected to improve their appearance. What we are looking for are quality and percentage of yield.

RECROSS EXAMINATION

The judge of the livestock show has to consider these things. When we were owrking on the tariff we used the office of the secretary of the Exchange as a gathering place to compare these different tests. Our secretary had no part in our group meetings whatever.

(Whereupon the witness was excused.)

MR. GROVER C. MAXWELL, a witness called by the Respondents, after being sworn, testified in substance as follows:

DIRECT EXAMINATION

I am connected with the Maxwell and Furnish Livestock Commission Company, known as Firm No. 7 in the audit. This is a partnership, Mr. Ben J. Furnish and I constituting the partnership. I have been in the commission business for 20 years, and Mr. Furnish has been connected with the commission business 14 years. My business was farming before I went into the commission business. They have that mapped out wrong in Government Exhibit 115 showing that my firm spends 28 percent of its gross income for business getting and maintaining expenses.

We advertise in little country papers around here and some in the Kansas City paper, and some in the Drovers. The item of "circular letters," amounting to $86.60, covers circulars and cards.

We have a mailing list. We check it every year, and people that come regularly we put on. There is not a name on our addressograph that didn't ship livestock to us in 1931. We write them a few letters, and if they come back and show that they are coming back we put them on the list. They ask for the circular.

1493 We receive requests for these circulars. When we send these cards out we feel that we are giving them service in addition to the actual selling of their cattle on the market.

I do not know where they got the item of postage amounting to $504.50 classified as "advertising." I would think that in a year's time we would spend more than that for stamps. Yesterday we mailed out 82 or 83 letters. That included truck drivers and account sales, there being some 20-odd truck drivers. We had to pay a three-cent stamp on each one of those, and a two-cent tax on checks. If we get a truck consignment in we send an account sale and a check to the owner. We also send a check to the truck driver, so there would be a total of ten cents out of pocket cost in addition to stationery and other expense incident to the writing up of the account sales and the checks.

We carry about two thousand names on our mailing list. We send a market letter every month, and in the fall sometimes twice a month. The postage on these circulars has been a cent and a half.

The item of "specialties and novelties," amounting to $126.15, covers pencils and notebooks. They were given to our customers.

The item of "other expense," amounting to $156.70, might cover small donations made to country fairs. I have a good many friends and acquaintances in the county south of Kansas City. I know 95 percent of all the customers I have.

On these trips creating travel expense my territory is closer to town. I will take about half what my partner does, because his territory is farther away. I have my automobile, and he has his. We do not charge depreciation on those automobiles to the business. We each wear our own car out and figure what money it takes if we have to stay at a hotel, and the gas and the oil, or if we have a break-down and have to buy a tires we charge it to expense; otherwise, we pay our own expenses of the cars. We never go into the country after a stranger. It pays to go and look at customers' cattle. In the fluctuation of markets, we get a lot of orders in for just a kind of cattle, and they raise the price a dollar a hundred, and if the orders are not around there we have to make them better to bring the price. If I have some customers who can get their stock into the market pretty quickly during the week, and I have seen their livestock and know

1494 about it- condition, and if it appears on Monday that there are a number of orders in the hands of different buyers on

the market, we will wire them at their expense to ship these cattle on a good market like that. If I had not seen the livestock and had knowledge of their condition, it would be a complete guess.

To a certain extent it helps in selling cattle and in getting a better price for them when I know how they have been fed and handled. When the buyer gets his kill back he can tell whether we have told the truth. If we misrepresent a bunch or two they will kick back on the rest of them.

The strangers a man picks up in this business are friends of some man that we know. When we go down to look at cattle, a customer will tell us about his neighbor who will ask us to look at his cattle, and we will go over and appraise them lots of times for our firm. It is generally a case where they have enough livestock to feel like asking for the service. Of the $523.70 charged to travel and the $132 charged to automobile expense, I do not think two per cent in our case would be for new business.

I have never heard of the Exchange soliciting any business for our particular firm. We are generally reasonably busy the first part of the week and go out the last part of the week. Lots of times, if our business on the market needs attention, we postpone our trips to the country until later in the week. We go out on Sunday. So far as our firm is concerned, our time would either be utilized staying here in town and be more or less stand-by time if we did not go to the country.

If we dealt with strangers instead of friends and acquaintances it would almost take a man in our business to keep checking up on them. It would slow up the business. We try to keep in touch with our men to know if they have to have a recommendation for a money loan so we could really tell them what we think of the man. Last week a man came to me over in the hog yards and I did not know him. I questioned him as to who hauled his livestock and where he lived. I was acquainted in that country from which he came. I was able to check up on the accuracy of his statement.

CROSS-EXAMINATION

1495 I sell hogs. The man who came to me in the yards wanted to take his scale ticket to the office and get his proceeds. We don't make any special trips out to see small lots of livestock that come by truck. When I have been to look at livestock and know the owner, know his reputation in the community in which he lives, our risk of losses from selling mortgaged or stolen livestock is much less. The buyers are practically through on Thursday, and all these fellows that come from a distance to buy around here would not come in the last part of the week.

The trucked-in livestock will come more freely the first part of the week, but it holds out better during the last three days of the week than rail shipments.

The carrying of advertisements in local country newspapers, sending out circular letters to our customers, giving them notebooks and pencils, going out to appraise livestock in the country, and talking with the customers about their livestock are necessary to the holding of our business. I would expect to see my business slipping away if we did not do those things and the other firms did. I spend money for the purpose of getting a result in additional profit that would come from additional volume.

It would not be an intelligent way to try to get business for a man to stop at a farm and introduce himself to the farmer and ask him to ship livestock to our firm. I would not think that any of the commission men go at it that way. We go at it in a more intelligent way of being helpful to the man in the country, expecting to profit from that helpfulness.

The livestock exchange here at Kansas City does carry on activities and makes efforts to attract business to this market in competition with St. Joseph and Omaha and other markets. That is done for the general benefit of all the commission men and the exchange leaves to each firm to get out of that business what they can.

I would not say that you can get any more for livestock that you have seen in the country than you can for livestock that you have not seen, but when you have seen them you can tell the man about what to expect of this livestock. It helps if we can tell the packer buyer that the livestock have been well handled and well fed. We do not always tell the buyer unless he pins us right down to it, but if we do tell him we give it to him straight. We would not tell him anything that we did not have to in a case where the livestock had been improperly fed in the country. We would not mean to hurt the sale. We might change his conversa-
1496 tion and not tell him anything. The buyer has to go on his own judgment in buying to a certain extent.

We put into effect salary reductions in the year 1931. The reduction was about 15 per cent of all employees. It became effective in August 1931. We have made no salary reductions this year. We reduced our own salaries and the expenses for telephone and water. We discontinued the telephone extensions into the yards in 1931.

REDIRECT EXAMINATION

Our telephone charges during June or July 1931 were increased by reason of the increased tax on telephone services. We had the

increased expense due to the tax on checks and increased postal rates. We have not had any rent reductions.

I cannot see any reductions in other expenses such as stationery and that sort of thing over last year. If the Exchange were to put a rule requiring a man to stay on the market all the time, it would lock the market up. If our firm individually attempted to do such a thing it might as well quit.

All these activities of the Exchange were designed primarily to benefit and attract the people who might consign livestock to Kansas City. That is true of our own individual efforts. We endeavor to attract business by being of service, either on the market or off the market, to our friends who are our customers. Where cattle have been well fed it is of advantage to me to be able to state to the buyer that I know the feeder and how these cattle have been fed in connection with interesting him in making a good offer. With respect to the different grades of cattle, of lesser value, the market activities on one grade will vary from that on other grades from time to time.

When I see that the market is going to be active on a particular grade, I endeavor to get in contact with customers and get them to bring their cattle on that good market. If I did not know how to place their cattle, I would be handicapped in my ability to advise them when to ship. I frequently spend money personally in connection with our trips, which is not shown on the books of the firm.

RECROSS-EXAMINATION

It is not my idea that all livestock would be diverted away from Kansas City, if all the commission men at Kan-
1497 sas City would stop going to the country, but I would naturally think that the man in the country would hunt someone else. I think it would hurt this market. Everybody that coud get to another market would certainly go to it. The shipper changes things by knowing the man that is selling his livestock and knowing that he will get the market. A man, generally speaking, could get just as good a price for his livestock on another market as he could here at Kansas City. If all commission men everywhere stopped going to the country, I think we would go back to the days when the owners would start out with the livestock and look for a buyer. There would not be as many livestock shipped. The owners would not be informed. The packers would naturally beat them all they could.

REDIRECT EXAMINATION

There would be a constantly increasing percentage of livestock moving direct to the slaughterers under such a situation. Small,

uninformed men would get a mighty bad deal and some few men would get a reasonably good deal. The producers of off grades of livestock and the small producers of livestock would be almost eliminated.

(Whereupon the witness was excused.)

Agreements as to evidence, etc.

Whereupon it was agreed by Government counsel that he would recommend to the Department that a statement as to the principal amount of bonds given to protect shippers' proceeds by the various respondent firms as of December 31, 1931, would be included in the exhibit to be prepared by the Department in connection with the total gross proceeds of livestock sold and produced as shown on the annual reports Form PS–3.

Whereupon it was agreed by counsel for the respondents and the Government that if there had been a failure to take at the former hearing, the testimony, and exhibits, and the whole body of the evidence represents a fair typical cross section of the business of these respondents.

(Whereupon respondents rested their case.)

1498 Government Exhibit No. 139

Whereupon Government offered in evidence Government Exhibit No. 139, the same being a letter from J. C. Vance of John Clay and Company, addressed to John B. Gage, dated November 1, 1932, furnishing information which he was asked to furnish when he was on the witness stand.

Whereupon it was agreed by counsel for respondents and the Government that all the evidence in the record offer any exhibits, the record should show that they shall be considered as having been received subject to such objections as have been made.

(Whereupon counsel for the respondent stated that he would want to file a brief if that course of procedure would meet the approval of the Secretary. He also stated that he would continue to demand that the Secretary hear personally the argument of the evidence in behalf of the individual respondents, or at least have some definite course of procedure adopted whereby the examiner, or some one else should formulate a report on the evidence so that the respondents could have the character of hearing and right to present their side of the issues in this case, which they believe the law entitles them to.)

Whereupon the hearing adjourned on November 16, 1932.

1499 *Abstract of record of third hearing before the Secretary of Agriculture in B. A. I. Docket No. 311*

(Offered at Hearing Upon Order to Show Cause)

UNITED STATES OF AMERICA BEFORE THE SECRETARY OF AGRICULTURE

BUREAU OF ANIMAL INDUSTRY

Docket No. 311

In re

SECRETARY OF AGRICULTURE

v.

L. B. ANDREWS, DOING BUSINESS AS L. B. ANDREWS LIVESTOCK COMMISSION COMPANY, AND OTHER MARKET AGENCIES OPERATING AT KANSAS CITY STOCKYARDS, KANSAS CITY, MO., RESPONDENTS

1500 The EXAMINER. All right, gentlemen. Yesterday afternoon, the Examiner understands that counsel on both sides concluded their arguments on the exceptions to the tentative report. As the Examiner has heretofore indicated that after hearing argument he would then hear additional testimony. Are you ready to proceed, Mr. Gage, with the additional evidence?

Mr. GAGE. Is the Examiner now prepared to rule upon these exceptions?

The EXAMINER. No, sir.

Mr. GAGE. Respondents except to the action of the Examiner in failing to rule upon the exceptions after submission and prior to the taking of additional evidence for reasons heretofore stated and for the further reason that we believe that not only the clearly expressed intent of the Secretary's opinion and order of August 26, 1938, requires such rulings to be made in advance of further proceedings in the nature of the taking of evidence and also because the action of the Examiner in refraining from ruling at this time or prior to the taking of evidence denies to respondents the essentials of a full and fair hearing as required in the Act. We again ask that the propriety of these exceptions be determined by referring this and the other matters to which exception was taken before the commencement of the argument immediately to the Secretary of Agriculture himself for determination.

The EXAMINER. The Examiner thinks that his rulings on the matter just referred to are correct; that there is no occasion to refer the matter to the Secretary because the Examiner thinks that the Secretary, in his order of August 26, 1938, which has been served on all parties, clearly provides that the Examiner will hear the argument on the tentative findings and that the Examiner will take additional evidence, following which, he will prepare
1501 and submit to the parties a tentative report in accordance with the Rules of Practice promulgated by the Secretary of Agriculture governing proceedings under the Packers and Stockyards Act, 1921, as amended. Therefore, the Examiner thinks that the respondents should proceed to now offer additional evidence.

Mr. GAGE. May I inquire as to whether the complainant here, carrying, as complainant does, the burden of proof, intends to proceed with the presentation of evidence on behalf of the complainant?

Mr. DAGGER. Our position is the same on this matter, Mr. Examiner, as it was with respect to the argument on the exceptions to the tentative findings. As I understand it, the respondents filed a motion, I believe, to have the proceedings reopened to permit the taking of additional evidence and indicated in that motion the character of the evidence which they wished to produce. Inasmuch as they are the moving parties in this matter, I assume that they are going to present the evidence which they refer to in their motion.

Mr. GAGE. The record here clearly shows that these proceedings after final order was made and such final order held invalid by the court were reopened not upon motion of the respondents or any order but by action of the Secretary of Agriculture. It is true that respondents have, by motion, asserted that the record was stale; that additional evidence would be required through witnesses, by other proper means to make the past record, if it was to be at all considered available for use in the reopened proceeding. Assuming that our exceptions to the reopening were overruled, the exceptions have, in part, apparently been determined by the Secretary tentatively without argument being permitted under the facts as they now appear. Nothing has occurred in any way to shift from complainant to respondents the burden of proof or the obligation to proceed further with evidence if complainant desires to present evidence as that burden of proof,
1502 obligation to proceed with the taking of evidence existed at any time after the date of the original order of inquiry. Respondents understand from the order of reopening and from statements of counsel herein made that the order of inquiry remains unamended and is addressed to an investigation of the

reasonableness of the rates which existed as of the date such order of inquiry was first made. That being the situation, we desire to advise counsel for the Government that the respondents do, and upon that position and upon that proposition, respondents will insist that if complainant desires to offer evidence other than evidence in rebuttal or denial of such evidence, as may be offered by respondents, that evidence must be offered now and prior to the enforcement of the requirements indicated by the Examiner that respondents proceed with the presentation of any evidence which they may care to offer.

Mr. DAGGER. Mr. Examiner, we did not understand that counsel here is required by the statement which he just made to limit the action which counsel for the Government would see fit to take with respect to the introduction of evidence in case it is deemed necessary to do so after respondents have introduced their evidence.

Mr. GAGE. Counsel for respondent is not undertaking to limit or control himself the action or procedure in this case of Government counsel. The rudimentary requirements of fair play in a hearing of this sort establish that control. We simply direct attention at an appropriate time to counsel for the Government of our position.

Mr. DAGGER. I may have misunderstood counsel. I merely wanted to make clear that our silence at this time does not mean we are regarding ourselves at all bound by counsel's announcement ahead of time of what he proposes to do or what his position may be at some future time. In other words, it is my position that we will meet that issue when it arrives and not
1503 try to anticipate it at this time. In other words, the question of what the Government may wish to introduce is not now an issue before the Examiner, so I see no occasion for arguing that point.

Mr. GAGE. Does the Examiner rule at this time that respondents have themselves reopened this proceeding or does he take the position that it was reopened by the Secretary over the protest of these respondents?

The EXAMINER. The Examiner has only ruled that the Secretary, in his order of August 26, directed that, following argument, additional evidence shall be taken before the Examiner. In this order of the Secretary, reference is made to the motion filed by respondents on August 15 (that the Secretary designate an Examiner to hear evidence which respondents desire to opportunity to offer through the testimony of witnesses). That motion of August 15, 1938, filed by counsel for respondents, states, in part:

"That the Secretary designate an Examiner pursuant to rule 7 of the Rules of Practice of the Secretary of Agriculture to hear evidence which respondents expressly demand an opportunity to offer through the testimony of witnesses and by other proper means concerning:

"(a) The increased cost of rendering stockyard services at Kansas City in the years 1933, 1934, 1935, 1936, and 1937 and the increased difficulty during said years encountered by each of the respondents in the rendition of such services as compared with the years 1929 to 1932.

"(b) Evidence as to the decline in the revenue of respondents and in the receipts of certain species of livestock at Kansas City during some or all of the first mentioned years as compared with the last mentioned years.

"(c) Evidence as to the increase in the value of respondents' services as rendered and in the amounts of money received and paid for the same quantities of livestock as handled by respondents in some or all of the first mentioned years as compared with the last mentioned years, and,

"(d) All such further evidence material and relevant to the proceeding as may relate to the facts, circumstances, conditions arising and affecting respondents' operations in said first mentioned years."

1504 The Examiner has indicated he thinks that in view of what he has just read from the respondents' motion and the ruling of the Secretary that respondents should now be afforded an opportunity to offer testimony, because the respondents expressly demand an opportunity to offer testimony, and therefore should proceed to offer it.

Mr. GAGE. I understand that clearly, Mr. Examiner. I want to also definitely understand whether under your construction of the order of the Secretary either of August 26 or June 2, the Examiner is authorized to hear evidence submitted on behalf of the Government. If so, it is our position that evidence must be submitted under the order of reopening made by the Secretary before any evidence submitted by the respondents is heard. I take it, under the construction given this motion and order by the Examiner, only evidence submitted by respondents is to be considered by the Examiner.

The EXAMINER. No, sir. The Examiner feels that under the order of the Secretary he has been "designated as Examiner for the purpose of taking such additional, relevant, and material evidence as the parties in this proceeding may desire to offer with respect to conditions subsequent to June 14, 1933." I think the Secretary's order there very clearly uses the word "parties" which will, of course, include both the Government and the respondents.

Mr. GAGE. That is exactly our position, Mr. Examiner, and inasmuch as it did include the word "parties" it referred to both Government and respondents, and the burden of proof resting on the Government, we insist that they proceed with any evidence if they have any evidence on behalf of complainant to offer.

The EXAMINER. The Examiner thinks that his ruling is correct.

Mr. GAGE. I think the record clearly shows by the Secretary's order of June 2, 1938, that the proceedings herein were reopened by the Secretary of his own motion without application of any respondent or other person for such reopening and that
1505 the Secretary or the complainant remains the party movant herein to the same effect as if this were an original proceeding.

Mr. DAGGER. Mr. Examiner, a reference to the order of June 2, reopening the proceedings will show the scope of that reopening. It was opened further upon respondents' motion. The Secretary granted that motion in his order of August 26, 1938, granting the opportunity to respondents to introduce their additional evidence which they demanded the opportunity to present. The extent and purpose of the reopening of June 2, 1938, have been satisfied in connection with the proceedings had here up to this time; in other words, the argument on the Exceptions to the Tentative Findings.

Mr. GAGE. Of course, respondents do not agree to the accuracy of the statement made by Government counsel, as is manifest in our previous statements. If the Examiner remains of the same opinion as he has expressed heretofore, we will of course under protest and still insisting upon the correctness of the position stated, proceed to offer such evidence as we think material to the——

The EXAMINER. All right, sir.

Mr. GAGE. Issue indicated by the order of reopening, still reserving our exceptions to the validity of the order of reopening or the right of the Secretary to enter such order or to further proceed under the original order of inquiry or to make or enter any order as of any date as indicated upon the so-called tentative findings attached to such order in this proceeding, insisting further that under the ruling in the United States District Court of the Western District of Missouri, the complainant herein has no right, jurisdiction, or authority to so proceed. We only shall proceed to offer evidence under protest, still continuing to reserve and rely upon and without waiving the exceptions and objections heretofore placed of record, challenging the legality of such procedure.

Respondents were advised in argument by counsel for
1506 the Government yesterday that he was in doubt as to whether certain portions of Technical Bulletin No. 57, respondents' Exhibit 18, issued by the United States Department of Agriculture under date of February 1928 had been offered in evidence. Respondents' counsel has not had an opportunity to investigate the record in that respect but, in order that there may be no uncertainty about the matter, pages 19, 20, 21, 22, 23, 31, 32, 33, 34, 35, and 36 of this bulletin are now offered in evidence.

The EXAMINER. Is there objection?

Mr. DAGGER. As I understand it, Mr. Examiner, counsel does not know whether these same pages are already a part of the record. Is that correct?

Mr. GAGE. All I know about it, Mr. Dagger, is this, that you questioned the fact as to whether they were or not in your argument of yesterday. I have not had an opportunity to check up the matter in the record. In order to relieve the matter of any uncertainty I now offer those pages.

Mr. DAGGER. Mr. Examiner, to the extent that these pages indicated are not already a part of the record, the Government objects to their admission in evidence on the ground that they are immaterial to the issues in this case and, if it may be so understood, we would like at this time to place on the record a general objection to any evidence which the respondents may offer here on the ground that such evidence is immaterial. We would like to make that arrangement if possible in order that it will save considerable time and considerable work on the record if we can make that objection.

The EXAMINER. Government's objection to the pages referred to in the Technical Bulletin entitled "Cooperative Marketing of Livestock in the United States by Terminal Associations" is overruled and those pages will be received and considered in evidence.

1507 Mr. DAGGER. I would like to note an exception to that ruling and ask whether or not it will be agreeable to place the general objection on the same ground to all the evidence which respondents may introduce here.

The EXAMINER. The general objection to the introduction of the pages just referred to by the examiner to the technical bulletin is overruled, and the general objection to the introduction of evidence on the part of the respondents is also overruled.

Mr. DAGGER. And may the record show that we note an exception to that ruling, Mr. Examiner?

The EXAMINER. Yes, sir.

Mr. GAGE. Respondents desire to direct the examiner's attention to the fact that the objection based on the ground of immateriality generally made to all evidence is a general objection without statement of any specific reason why the evidence is complained of as immaterial by government counsel. The respondents, I believe, in this as in other matters are entitled to a frank and complete statement of government counsel as to his position in the matter, and we certainly except to objections of that general character being introduced into the record, although we concur in the ruling of the examiner, which was, of course, the denial of the objection.

Mr. DAGGER. Mr. Examiner, we have read respondents' motion in which they have requested the opportunity to present additional evidence, and have there enumerated the general classes of evidence which they wish to introduce. It is upon that motion and the type of evidence which is there indicated that we predicate our general objection to the evidence now offered and about to be offered, as indicated by that motion, because we contend that it is irrelevant and immaterial to the issues in this case.

The EXAMINER. As indicated by the examiner, that objection is overruled, but the examiner does not feel that he can
1508 prevent counsel on either side from making objections, whether it be a special or general objection.

Exhibits A–1, A–2, and A–3 received in evidence.

H. E. BUFKIN, a witness called by the respondents, after being sworn, testified as follows:

Direct Examination by Mr. GAGE:

I am Chief Accountant for the Packers and Stockyards Division, Bureau of Animal Industry, Department of Agriculture. I have been connected with that division for 15 years. In that division are at least some of the reports since 1923 relating to operations furnished by market agencies at Kansas City annually upon forms provided by the division. The reports are available back to 1929 or about that year. Each year there is prepared under my supervision a summary of the reports relating to the income and expense of all these commission agencies registered with the Secretary under the Act.

Copies of the consolidated annual reports of commission agencies operating at the Kansas City Market in the years 1923 to 1937, inclusive, identified as Exhibit A–4 but not introduced.

These summaries of the reports of all market agencies include the agencies that sold horses and mules at Kansas City but the transactions involved cannot be isolated from the summary for the years 1923 to 1927. The consolidated statements of annual

reports for the years subsequent to 1928, show separately the volume of horse and mule business. Respondents' Exhibit A–5, which has been handed me, was prepared at your request from the material set forth in respondents' Exhibit A–4 entitled
1509 Kansas City Commission Agencies recapitulation of consolidated annual reports prepared from statements furnished by P. & S. Administration covering reporting market agencies' operations 1923 to 1937, inclusive, this being the recapitulation which I was asked to examine and check this morning. I have verified a majority of this statement and found it to be correct with the exception of the items which I called to your attention and which has been corrected for the year 1932. I will complete that examination of this recapitulation this afternoon and report any inaccuracies to counsel for the parties here and the Examiner so that any necessary corrections may be made therein.

The tabulation which you hand me entitled "Respondents' Exhibit A–6," bearing the title, "Kansas City Commission Agencies Revenue Headage from Consolidated Annual Reports, Statements furnished by Packers and Stockyards Administration, Business Trends 1928 to 1937," is the tabulation you gave me for the purpose of rechecking against the material contained in the consolidated reports, which I furnished and which are contained in Exhibit A–4. I have checked the majority of this statement but not completely. No inaccuracies whatever have appeared in what I have done.

Respondents' Exhibit A–5 and Respondents' Exhibit A–6 offered in evidence.

Examination by Mr. DAGGER (for purpose of objection):

I prepared Exhibit A–4 from the annual reports filed by market agencies at the Kansas City Stockyards. I am not sure that each firm submitted a report. There may be one or two that were received late and were not included in the tabulation. I haven't verified that. That tabulation includes those market agencies who are registered to buy and sell. That would not include the order buyers. I have not personally checked
1510 any of these annual reports against the books and records of those market agencies submitting those reports. I don't believe that all of these agencies making reports reported impounded commissions as a separate item on their reports. I haven't been able to verify that for each concern, but it is my opinion that not all of the firms have reported the correct amount of impounded commissions. I have included an item of impounded commissions in those reports during the period of impounding. I notice on the typed statement they have been

excluded from the gross total commissions. When I refer to the typed statement, I mean Respondents' Exhibit A–5. I do not know of my own personal knowledge whether or not those agencies which report impounded commissions as a separate item actually report under selling commissions the gross commissions collected, or only those commissions collected less the impounded commissions. I, of course, have the figures that are shown on the report which reflect the gross commission and also shows the impounded commission as a separate item; in other words, the gross commission is reflected as a credit in the report and the impounded amount is shown as a debit. That would indicate, according to accounting procedure, that the gross commissions had been reported. As I have seen some of the reports of particularly the smaller firms, I don't believe there was any notation made on them to identify the amount of impounded commissions, therefore, we were not able to segregate that amount from the gross commission, but where the amount was identifiable we did set it out. In the preparation of this compilation, Respondents' Exhibit A–4, I did not make any adjustments of any kind.

All the material here contained was compiled from that set forth in annual reports required of market agencies by order of the Secretary under the provisions of the Packers and Stockyards Act, 1921, and on file here in the Packers and Stockyards Division. If any question arises concerning any report after it is received there are occasions when the officials connected
1511 with the P. & S. Division communicate with the agency that files the report. I took into consideration any corrections that might have been made or supplementary information that might have been given. I took the reports as they were rendered, subject to any correspondence that may have taken place at that time. There may have been a few cases where annual reports as to certain agencies were missing in specific years where they were received too late to be included in the tabulation due to inaccuracies or questions of some character that may arise. It happens quite frequently with relation to agencies of small volume. I don't think the failure to include in those instances the results shown on the annual reports would substantially affect the general showing here. I will examine the records to see whether there were in any years occasions upon which reports of large agencies that would affect the general result or general average were omitted from consideration and will report what I find.

To my knowledge there has never been made by anyone representing the accounting department of which I am a member a

check of these annual reports or any of them against the books and records of the reporting agencies.

Direct examination by Mr. GAGE (continued):

The annual reports that are filed are not verified according to the records. We receive these reports as they are rendered, and of course there is no way to verify them against the books and records of the company unless we would go out there and check them. They are not sworn to. They are merely signed by an officer of the company. There is nothing that I know of to prevent us from verifying the reports with the records, but that has not been done so far as I know. It isn't the practice to do that.

Respondents' Exhibit A–4 was received in evidence.

On rechecking Exhibit A–5, I found that there were two typographical errors, which I have corrected, and they do not change the result. In the gross income under "Other, country, 1512 yea rof 1921," I have corrected the figure to read $18,831.82 instead of 18,836.32; and in 1927 the gross income under "Other" has been changed to read $29,739.29 instead of $29,731.29. The total of the gross income is correct as the statement reflected.

Respondents' Exhibit A–5 was received in evidence.

In rechecking Exhibit A–6 the figures shown by the statement for the year 1932, "Buying Cattle and Calves, 426,048" should be 431,543. The difference amounts to 5,495 head. Now, for the year of 1937 "Sheep Buying" the statement shows 138,958. It should read 136,958, a difference of 2,000 head.

The year of 1935 "Buying Cattle and Calves" should read 409,248 instead of 401,896. "Cattle and Calves, Selling," for the year 1934 the statement shows 1,941,680. It should read 1,941,675, a difference of 5 head. I will make the corrections.

I have not, of course, attempted to work out the equivalents as shown on this statement, but I have attempted to check these equivalents which show for the period 1933 to 1937, 2.35 hogs to 1 cattle and calves. My calculation shows it should be 2.14 to 1 cattle and calves for that period. The period is 1933 to 1937. In other words, the same as it is for the period 1928 to 1934. It seems that the person typing the sheet reversed the hog equivalent. My calculations show that the equivalent should be 2.35 for the period 1928 to and including 1932. I have tested several of the percentages to find out whether they were correctly applied on the basis of 2.14 for the period 1933 to 1937 and 2.35 for the other period. I found that it did not work out according to this percentage as shown on this report. I have not worked out all of the equivalents. Now, for the sheep, my calculations

show sheep reduced to cattle basis for the period from
1513 1933 to and including 1937 should be 5.36. The statement shows 5.74. My calculations show 5.74 for the period from 1928 to and including 1932 as against the statement of 5.36. It seems to be it has been reversed on the statement. It is very likely that the figure 34 should be corrected in each instance to read 32.

The equivalents as shown do not seem to work out according to the ratio as shown down below here. However, the equivalents as I have read them into the record are arrived at by using the total head as shown on the statement as against the equivalents as shown on the statement. I do not know from what source these equivalents were arrived at. Now, as to the annual reports not being included, I find that the McDonald Live Stock Commission Company report for the year 1931 was not included in the tabulations for the reason that it was received late and I believe at that time this firm had been suspended for some violation. The gross income amounts to approximately $12,000.00 for the year 1931, which does not materially affect the gross income for the market.

F. W. MILLER, a witness called by Respondents, after being duly sworn, testified as follows:

Direct examination by Mr. GAGE:

My name is F. W. Miller. I reside in Washington and I am connected with the Packers and Stockyards Division of the Bureau of Animal Industry in the capacity of Assistant Chief. I have been there about 17 years during which period I have had to do with the administration of the Packers and Stockyards Act under the Secretary of Agriculture. We have records of the names and number of registrants as market agencies at posted public stockyards as provided by the Act. A statement was pre-
1514 pared under my direction indicating the number of commission agencies registered in respect to the sale of cattle and calves, hogs, and sheep at the Kansas City stockyards. The tabulation on Respondents' Exhibit A–7 which you have handed to me was prepared under my direction.

For the fiscal years it shows the number of registered market agencies who are registered to sell and buy livestock on a commission basis at the Kansas City stockyards at the close of each fiscal year beginning with June 30, 1931, and continuing to and including the fiscal year ended June 30, 1938. It was compiled on that fiscal year basis for the reason that in the interest of time we could prepare it much more expeditiously inasmuch as our records are all maintained on a fiscal year basis. For those

fiscal years from June 30, 1931, to June 30, 1936, the figures were taken from tabulation sheets which are maintained on a day to day basis as the registration forms come into the Washington office, and they are subject to some little variation as compared to what would probably be done by an actual enumeration. To that extent there may be some slight discrepancies there but to my knowledge those would be very small and in no event more than one or two in number. For the fiscal year ended June 30, 1937, the number shown is the result of an actual enumeration on the cards and not from the tabulation sheets, and the same is true for the fiscal year ended June 30, 1938. The classification shown on that form as to the various types of agencies was used simply for the reason that our tabulation sheet follows that type of classification, but it should be understood that in each case each registered agency shown here in the first series of figures represents commission firms that actually engaged in selling and buying livestock on a commission basis. Some of them in addition engage in other activities as disclosed by the classification on the form. In the second category the figures represent
1515 registrants who buy only on a commission basis and do not sell and some of whom in addition thereto engage in other activities. In each of the years shown on these forms there is one commission agency engaging wholly in the sale of horses and mules. Therefore, if I were enumerating just the agencies that were engaged in the sale of cattle and calves, hogs, and sheep, or either one of those species, I would reduce the numbers there shown in the first line in each instance by one agency.

Respondents' Exhibit A–8 which you hand me was prepared under my direction and contains the heading "Names of Market Agencies Selling on Commission at Kansas City as at June 30, 1937." It also contains one agency engaged wholly in the sale of horses and mules. That agency is the Kansas City Horse and Mule Commission Company and it is not registered to engage in the sale of other species of livestock.

The table in Respondents' Exhibit A–7 shows that for the fiscal year ended June 30, 1931, there was a total of 61 commission market agencies registered engaged exclusively in the business of selling and buying livestock on a commission basis, and for the fiscal year ended June 30, 1937, the number is 41.

The document which you hand me entitled "Respondents' Exhibit A–9," bearing the title "Names of Order Buyers on Commission at Kansas City as of June 30, 1937," was prepared under my direction. It indicates that 17 order buyers were in business as of that date. An order buyer under the Act is a market

agency registered to buy livestock on a commission basis acting as an agent for the principal who purchases the livestock. Twenty-one such agencies were registered exclusively for the purpose of order buying, as shown by Respondents' Exhibit
1516 A–7, as of June 30, 1931. It is not the usual practice to make audits relating to the financial condition of agencies that retire from business or discontinue business during the period of their registration in the absence of information indicating an unsatisfactory financial condition or an apparent insolvency of such agency which would result in probable losses to creditors including shippers, principally. In such event, it is the uniform practice to make an audit on the record of such agencies. I recall audits being made and I think proceedings instituted on some of the agencies that have discontinued business during a period of registration subsequent to June 14, 1933. I would not wish to state definitely without refreshing my recollection from our records, whether there were others than the Harry Kennaley Commission Company. I am unable to state definitely as to any with the exception of Harry Kennaley Commission Company, which I recall resulted in a proceeding. I have in mind there may have been others.

By Mr. DAGGER (as basis for objection):

As to the change in our practice with respect to keeping a record of the number of registrant firms along about 1935 or 1936 the explanation I tried to make as to Respondents' Exhibit A–7 was simply this. In order to produce this information in as short a time as possible, we used the tabulation sheets that are kept daily, back in that particular section, on which is entered information taken from the registration form itself, and which is kept up as a sort of current or running record. Now, that information so obtained is reflected in the figures for the
1517 fiscal year June 30, 1931, up to and including the fiscal year June 30, 1936. Now, we were requested to furnish an actual list of the names of registrants for the fiscal year ending June 30, 1937, which was obtained and had to be obtained by reference to the index cards themselves, so that that is the only distinction between the figures for the first six fiscal years and for the two following years. I obtained this information from the tabulation sheets for the first six years. I explained that that is subject to some possible discrepancy, for instance, a situation like this may arise where there is a reorganization of a firm and a new registration comes in and is tabulated as a new registration, but the old one is allowed to remain until we receive definite word that that one shall be rendered inactive;

sometimes, that will come in following the compilation of the years' tabulations, will result in a duplication. Instances where the firm may enter into business for a short time and retire from business within a year's period would be reflected in the tabulation if it all transpired within the course of a particular year. It would be entered once as a new registrant and again as a retiring registrant if he registered during the year and retired during the year. There would be what we would call an add and a drop.

Respondents' Exhibits A–7, A–8, and A–9 were received in evidence.

1518 H. E. BUFKIN, a witness called by respondents, having previously been sworn, returned to the stand and testified as follows:

Direct examination (continued) by Mr. GAGE:

I have made the calculations necessary in connection with respondents' Exhibit 6 to determine whether or not the equivalents as I determined them were correctly applied. I have made the corrections in this exhibit. By applying the equivalent of 2.14 hogs in the period 1933 to 1937 to the total hogs, I arrive at the total head calculation equivalent as shown in this statement. I have made the correction as follows: For the period 1933 to 1937 2.14 instead of 2.35. The period of 1928 to 1932 should be 2.35 instead of 2.14. For sheep during the period 1933 to 1937 the figure should be 5.36 instead of 5.74, and for the period 1928 to 1932 the figure should be 5.74 instead of 5.36. That is all of the corrections that are necessary in this exhibit.

By Mr. DAGGER (as the basis for objection):

The figures at the bottom of the page of respondents' exhibit A–6 under the caption "Equalized on Income Producing Basis" are placed in that exhibit by someone other than myself and of course I have only attempted to check the calculations or, in other words, I have proved the statement mechanically so far as the equivalents are concerned. I do not know from what source the figures are arrived at in order to show an equalization on income-producing basis. The figures given under each species at the top of the page and the first half of the page at the bottom are figures reflecting the headage of the respective

1519 species of livestock. I did not place those figures there. The volume of figures were obtained from the summary of annual reports furnished to Mr. Gage. I did not summarize it myself. I did check them against the annual reports. These headage figures with respect to each species all checked out with the annual reports with the exception of the corrections which

I have made. To obtain the equalization figure at the bottom of the exhibit, to illustrate, I multiplied 2.14 against the sheep equivalent of 257,463 in order to arrive at the total of 1,379,999. It is a mechanical operation. In other words, I first attempted to arrive at the total of 1,379,999 by applying the figure that originally appeared in the exhibit, which was 2.35, against the figure of 257,463, and I found that to be in error, so we tested the figures and found out that the basis should be 2.14 times 257,463, in order to arrive at the total sheep amounting to 1,379,999. That figure of 257,463 appeared in the statement when it was delivered to me. I didn't furnish those figures. Mr. Gage furnished me the statement. I did not prepare the so-called equivalent figures. I did not prepare the figures appearing at the bottom of the page under the caption "Equalized on Income Producing Basis." Those figures were also on the statement when I received it from Mr. Gage. I did not check them against anything. I do not know upon what they are based.

1520 By Mr. GAGE:

The only information concerning the average commission income per head during any period by species for selling livestock at Kansas City is what is shown in these reports received from agencies at Kansas City and filed in the division. These reports do not make a distinction between cattle and calves in all instances. In some cases they may. I would have to check that against the record. If you are speaking of gross income, I am mistaken. In the case of mixed shipments we would not have a separation between species. I do not know of any record we have that would show that. We do not have that separately stated in any of the files of the Department for any period with respect to the Kansas City agencies. We do not separate the commissions by species and, in fact, we do not require it in the annual reports. I could not state in the aggregate what the per-head income or yield was or should be at Kansas City under either the tariff prescribed in the order of June 14, 1933, or under the tariff effective May 23, 1932, by species. I could give the rate per head, but we do not keep any such record as that for the market or for the individual firms. I could not state how many hogs it would require on the average to produce the same amount in dollars or cents of gross commission revenue as would result from the sale of the average head of cattle and calves sold under that tariff. It would be purely a guess on my part because I haven't made any study of this, and of course I know the one head arrivals affect the averages and more than one head affects the arrivals, and I believe in order to make an intelligent statement I would at least

have to study the figures. I can make a guess of course, but it would be a guess.

During the 15 years I have been connected with the
1521 accounting department of the Packers and Stockyards Division I have had a little to do with this particular proceeding. I assisted in the auditing at Kansas City. I did not assist in the preparation of the cost studies. I didn't work on them. I don't recall that I assisted in making tests of any of the several tariffs that have been in effect at Kansas City. I may have but I just don't recall just now that I have done that, certainly not in recent years. I will make a thorough search of the files in this division to determine whether there is anything in those files from which to make a substantially accurate statement as to the relative revenue yielding capacity by species, under either the so-called tariff No. 3, effective May 23, 1932, or the tariff prescribed in the so-called tentative order, or the order of June 14, 1933.

1522 Exhibit A–6 withdrawn until witness can consult the Department files for information to ascertain the accuracy of those equivalents.

Direct examination of Dr. Miller by Mr. GAGE (continued):

So far as I can discover them I have secured copies of the final orders. These final orders relate to Harry Kennaley, trading as the Harry Kennaley Commission Company, and Walter G. Land and John E. Maze, trading and doing business as Walter G. Land Livestock Commission Company. The audits in these cases resulted in formal proceedings, each of the respondents waived hearing and the audits were not introduced in any record. This is the audit with respect to the Harry Kennaley Livestock Commission Company. I may further state that, due to the waiver of hearing by the respondents, the audits were not typed as they would have been had they been introduced as exhibits, but they are complete there with the accountants' working papers. This is the audit of the Walter G. Land Company.

An examination of the audit or other papers in the possession of the Bureau shows that Harry Kennaley Livestock Commission Company was insolvent and owed remittances of proceeds to shippers. In the accountant's comments which constitute a part of his audit report the statement is made that "there are unpaid proceed remittances issued since October 1, 1934, of $19,382.03," and that same figure is set up in the liability side of the balance sheet statement as proceeds of livestock consignment.

Q. Does the Packers and Stockyards Division of the B. A. I., of which you are assistant chief, summarize annually the material contained in the report of the two cooperative marketing agencies

at Kansas City, namely the Farmers Union Livestock Commission Company and the Producers Commission Company?

A. The information contained in their annual report is summarized in the division in the same manner as the information contained in the reports filed by all market agencies.

1523 Q. Will you produce those summaries for the years 1933, 1934, 1935, 1936, and 1937?

A. How far back, 1934?

Q. 1933.

A. For 1933, I think they are available and can be produced.

Mr. GAGE. I ask that that be done.

Mr. DAGGER. You mean you are asking for the individual reports?

Mr. GAGE. I am asking for the summary, and ask in addition for the individual reports.

Mr. DAGGER. We object to the production of those. I assume that counsel is calling for them for the purpose of introducing them in evidence?

Mr. GAGE. That is the purpose.

Mr. DAGGER. We object on the ground that we have already stated in our previous objection, namely, that they are irrelevant and immaterial because they cover matters subsequent to the date of the closing of the second hearing in this case. We further object on the ground that these two organizations are not now here represented or interested in this proceeding. In fact they are not actual parties to this proceeding in the sense that they have anything at stake because they operate under the Secretary's order and file tariffs in conformity therewith. Furthermore, we call the Examiner's attention to the fact that the part of the Federal Trade Commission Act incorporated in the Packers and Stockyards Act by reference places some limitations upon the placing of information of this character into the hands of the public. We think for all of those reasons or for any one of them the documents should not be produced.

The EXAMINER. In view of the provisions of the Packers and Stockyards Act referred to by counsel for the Government the objection to the introduction of the report of the Producers Commission Association and the Farmers Union Commission Company is sustained.

1524 Mr. DAGGER. Do I understand, Mr. Examiner, that you base your ruling upon the provisions of the Packers and Stockyards Act and the Federal Trade Act?

The EXAMINER. That is correct, and I did not feel it was necessary for me to consider the merits of your other objections in view of the ruling made by the Examiner.

Mr. GAGE. Respondents do not feel that that is a proper or correct construction of the provisions of the law and further offer to show that actual operations, under the Secretary's rates through these proposed exhibits by these agencies, were unprofitable and in fact, disasterous to the financial condition of those agencies during the years in question.

The EXAMINER. Anything from Government counsel?

Mr. DAGGER. No; I have nothing.

The EXAMINER. The Examiner will consider your offer of proof through any source that does not conflict with the statutory provisions that he has just referred to.

Mr. GAGE. Of course, we except to the ruling and I believe general exception, is it not, on the record?

The EXAMINER. Exception as agreed by counsel on both sides follows every adverse ruling that he will make in this case as to either party.

So far as our records disclose it is correct that except in the case of the W. G. Land agency and the Kennaley agency, no final audits were made by accountants for the Department after those other agencies went out of business.

Representative tariffs of market agencies operating at Joplin, Mo., Springfield, Mo., Parsons, Kan., Wichita, Kan., Oklahoma City, Okla., St. Joseph, Mo., Omaha, Neb., and Sioux City, Ia., as of the year 1937 were not produced but it was agreed that counsel might refer to them as though they had been introduced in evidence.

1525 Cross-examination by Mr. DAGGER:

The audit of the Harry Kennaley Commission Company made as of November 26, 1934, shows that at some period the firm owed shippers $19,382.03. That was a complete financial audit, but does not include statements of income and expenses, such as a profit and loss statement. The balance sheet of that firm as reflected in the audit shows how much money was impounded with the District Court. Cash under the balance sheet, assets side of the balance sheet, there is an item listed as "Cash in possession of United States District Court" $3,035.95, which I assume to be impounded funds.

This audit shows that Harry Kennaley was engaged in other activities besides the livestock commission business. Under the assets side of the balance sheet listed livestock on feed having a value of $6,128.13, livestock on farms with an estimated value of $803.00, the grain elevator and real estate cost in 1931, $13,000; Kennaley's farm cost in 1928, $13,500; Clay County, Missouri, farm cost, 1927 to 1928, $23,000, and in the auditor's comments under miscellaneous it is stated, "Mr. Kennaley, under a real-

estate lease operated a gas and oil station in which, in the light of subsequent developments, he has no equity."

The audit shows that these farms and livestock had encumbrances on them. In respect of the livestock on feed, having a market value of $6,128.13, there existed notes payable in the same amount. The same was true of livestock on farms with an estimated value of $803. As to the grain elevator and real estate property, there existed notes payable, secured by mortgages on the property, of $4,000; as to the Kennaley farm, there existed notes payable of $5,000 secured by mortgages and as to the Clay County farm there existed notes payable, $10,800 secured in the same manner.

1526 He owed shippers of livestock, who consigned livestock to him for sale on commission basis, $19,382.03. He owed accounts payable for rent $88.00; Federal Check Tax of $2.66; miscellaneous accounts payable of $197.28; insurance on livestock consignments, $18.92; drayage on livestock consignments, $463.15, and mortgage expenses on livestock consignments, $205.32. Those seem to represent, so far as I can ascertain here, the other liabilities other than those represented by those notes.

In the auditor's comments, based on his examination of the records, the following statement appears: "It appears that Messrs. Sittenfeld and Kennaley were speculatively feeding drought affected livestock under uncertain misunderstood, or mixed arrangements and that as of November 1, 1934, the current or last papers in the principal amount of $28,764.07 were executed by Mr. Kennaley to Mr. Sittenfeld, who in turn deposited such collateral notes with the Mercantile Home Bank and Trust Company to protect them on a loan to Mr. Sittenfeld."

Examiner's attention called to case of United States v. McDonald, etc., in 10 F. Supp. 948, wherein some other activities of Mr. Kennaley are reported. Examiner rules that this was not testimony.

Redirect examination conducted by Mr. GAGE:

The statement which appears on the auditor's report under the heading "Kansas City Livestock Exchange" reads: "Data secured from the Kansas City Livestock Exchange signifies that Harry Kennaley is the free owner of membership certificate No. 1138, and that this membership is free. Memberships cannot be pledged without the approval of the Exchange. The value of a membership in good standing is considered to be $1,000,

1527 as certificates currently change ownership for materially less than this amount. There is some uncertainty as to the standing of this certificate of membership as the Exchange has currently taken action other than complimentary. As Mr.

Kennaley owes the Exchange $144.32, this amount may well be considered a prior claim against the proceeds of the certificate."

I am not sure that this report indicates the fact that Mr. Sittenfeld, in connection with the operations referred to, had advanced, prior to taking these liens, more than the total cost involved of these various items. There is a statement here in the accountant's comments that reads: "In accordance with data presented by the Mercantile Home Bank and Trust Company, Mr. Kennaley owes George Sittenfeld, $21,225.15 as of November 26, 1934; since such date $5,723.13, the proceeds of Harry Kennaley Commission Company from sales of pledged livestock, have been paid thereon. Livestock on hand valued at $405 remains to be sold." I don't think that is quite responsive to your question there, but I don't believe I am able to determine from this just what the facts were in that respect.

HAROLD E. BUFKIN, previously called and sworn, testified.

Direct examination conducted by Mr. GAGE:

Mr. Bufkin stated that he had made an effort to find in the files information to test the accuracy of figures appearing in Exhibit A-6 relative to the income equivalency of the different species but that he could not find it.

1528 Respondents' Exhibit No. 10, bulletins issued by the Bureau of Labor Statistics of the Department of Labor entitled "Changes in cost of Living under date of July 15, 1935, October 15, 1935, Jan. 15, 1936, Apr. 15, 1936, July 15, 1936, September 15, 1936, Dec. 15, 1936, Mar. 5, 1937, June 15, 1937, and September 15, 1937, received in evidence.

H. C. BATES, a witness called by the respondents, after being sworn, testified as follows:

Direct examination conducted by Mr. GAGE:

My name is H. C. Bates, I reside in Kansas City, Mo., and I am engaged in the livestock commission business. I am connected with the Ryan Robinson Commission Company where I have worked for 40 years. I have been treasurer of the Kansas City Livestock Exchange since 1926. I have had something to do with the activities of the bond committee of the Exchange. The functions of that committee are to see that the agencies maintain capital in their business necessary to properly conduct the volume of business they may receive.

In connection with the discontinuance of business by market agencies whose members are connected with the Exchange, the committee goes into their assets, sees that, if they are closing business, that there are no unpaid bills or shippers' remittances,

all necessary items of that kind. The committee normally requires financial reports from member agencies twice a year, sometimes oftener. I have occasion to examine the financial reports from time to time in the performance of my duties. These filed reports are preserved from year to year as permanent records of the Exchange. To the best of my belief past financial reports as to the periods prior to 1937 are preserved in the records of the Exchange, but I couldn't say positively. There has been a decided decrease in the net operating capital of the agencies reporting and in the net assets of those agencies during the period 1933 to 1937. The extent of that decrease has caused concern to me as an official of the Exchange. From time to time I examined
the reports of those particular agencies that have discon-
1529 tinued business during this period. In all cases capital was depleted to the point where these men retired from business. In the case of F. O. Morgan, his funds had given out. He retired from business and has since taken up some other line. The case of H. H. Klecker is likewise the same. So far as the Kansas City market is concerned he has closed his business, taking up a like business in Denver. He owed the Exchange some money on dues or assessments at the time.

In the case of H. F. Carnes, his funds were depleted to the point where he coudn't continue. In the case of Drumm-Standish Commission Company, their funds, through operations, had also reached the point where they decided to retire from business. I coudn't say whether or not they were solvent or insolvent. There have been made claims by creditors in connection with the recovery of the impounded funds, that is, as to their share of the impounded funds.

I am a member of the committee of several men appointed by the Court. The committee is to assist the clerk in the distribution of those funds.

In the case of Harry Kennaley, his funds were entirely depleted, owed considerable debts—at least numerous claims re filed. The bonding company that was on his market bond advanced the money to take up indebtedness due to shippers for the proceeds of livestock sold by Mr. Kennaley. There was an audit of his business conducted under my direction. This audit discloses unbooked costs of operation.

In the case of Ham Knighton, he likewise retired from business on account of depleted assets to the point where he could not operate. The same applies to J. D. McCormick. B. L. Welch, doing business as Welch Commission Company, a man who had been in the business at the yards for many years, a man of considerable wealth at one time, had to retire from his business on account of depleted funds, and has since gone to work for an-

other firm. W. E. Curtis also retired from business for the
1530 same reason, that is, unable to continue on account of lack of funds. Greer & Company, another firm who had been in business for years and years and at one time were very substantial as to finances, had reached a point through depletion of their assets to where they had to retire. Mr. Greer, a man well along in years, is now working for another firm. W. G. Land retired from business for like reason, and had outstanding debts at the time he closed his business. These debts were taken care of by the Live Stock Exchange inasmuch as his membership had a value which they figured would reimburse them. Some of the debts were debts to shippers resulting from failure to remit the proceeds of livestock; others were dues owing to the Exchange, all of which was absorbed by the Live Stock Exchange. J. Less White retired from business on account of lack of funds with which to continue, and is now in the employ of another firm. That completes the list of those who I recall have discontinued business since June 1933 and prior to November 1, 1937.

In my opinion, from an examination of the financial reports on the condition of the remaining agencies, failure to return their impounded funds held by the clerk of the court would have a considerable effect upon the solvency of such agencies. Many of the other agencies would be unable to continue business. Claims against the impounded funds have been made as a result of assignments of an interest in those funds to parties other than the agency which impounded them. In a great many instances salaries have been lowered decidedly with the understanding with the men whose salaries had been lowered that in case these impounded funds were returned to the firms, they would be reimbursed to the extent of their cut in salary. I also have knowledge of claims originating with banks which loaned money and other agencies which loaned money. Money has been loaned to individuals or firms on the very prospect of the court's returning these impounded funds.

I was acquainted with James C. Swift during his life-
1531 time. He was in the livestock commission business in Kansas City. He was connected with the firm of Swift & Henry. He died something over a year ago; I couldn't quote exactly. My information is that his estate was heavily involved. I couldn't say whether or not a claim was made by a creditor against his membership in the Exchange after his death.

As of January 1, 1937, the Kansas City Live Stock Exchange had 185 individual members active in business. Forty-two livestock market agencies engaged in the sale and buying of livestock on commission were controlled by those members as of the same

date. As treasurer of the Exchange I also had charge of the disbursements of funds by a committee appointed by member market agencies which has handled with counsel the representation of the respondents in this proceeding, and in the litigation arising out of the invalid order of June 15, 1933. The total amount expended for accounting services, court costs, attorneys' fees, and other expense incident to that proceeding and the defense thereof by respondents is $87,524.16 to date. There are outstanding obligations in connection with attorneys' fees to be paid out of the impounded funds when returned in the amount of $75,000.00. There naturally is expense in connection with the court costs incident to the defense of the present appeal taken by the government from the decision of the District Court holding that the Secretary had no right to reopen this proceeding, for instance, of our trip down here, whatever this entails, and other expenses that might arise subsequent to be added to those amounts. I wouldn't attempt to make any accurate estimate of what those expenses will be because I don't know how long this is going to last.

From my knowledges of the operating and commercial conditions of the market agencies at Kansas City, including my own agency, Ryan Robinson Commission Company, since the year 1933, my opinion is that the effect of the acceptance of the rates ordered by the Secretary on June 14, 1933, upon the continuity or
1532 the efficiency of the operations of these agencies would have been to lower the efficiency of the firms, from the fact that the costs allowed would not permit them to operate as efficiently as they had been. I base that mainly on the condition of my own firm. In my opinion, the acceptance of the rates ordered by the Secretary would have lessened the volume of business. I say that because we would be unable to make the effort to obtain business from competitive territory which we would do if we had more funds to operate on. It would probably have had an effect upon the yard operation in respect to the price of livestock from the fact that as a result of that rate salaries would be cut. I don't believe anyone works as efficiently under a much less wage than he had been obtaining than he would if his remuneration had been continued. A scarcity of yardmen, as compared with the volume handled, would have affected the return to the producer of a fair price for the livestock sold for the reason that the cattle on arrival, as to feeding and watering, and promptness in weighing, could not be cared for as promptly as if they had sufficient help. It is the aim of most commission men to have the cattle take on quite a lot of water and feed before they sell. If they are not weighed immediately after they fill, that weight shrinks rapidly. Cattle are like people. There might be a load or two of cattle that might not, but most of them shrink so that prompt weighing

of cattle after the sale is essential to efficient service. A thorough working out of the cattle by salesmen is essential to efficient services. The effect of the order under the conditions that actually obtained, which required the impounding of this excess by which the lawful rates exceeded the ordered rates, naturally caused a curtailment of operating expenses in the way of reduction in salaries or laying off of men which, in my opinion, would affect the efficiency of the firms. In the case of my own firm we maintained our salary rates as we always had because we studied the matter and saw that if we let the men go and made changes
1533 along that line it was our opinion that would impair our efficiency and the owners decided to go ahead as we had been, and the owners took, themselves the loss which we had during this period. If we do not recover the impounded funds our firms will have suffered substantial losses during this period. They were recurring annually up to November 1, 1937, with one exception, and that is small. Taking the period as a whole there was a very substantial operating loss in the case of my firm during the period between June 14, 1933, and November 1, 1937.

In my opinion, the effect of the reduction in number of employees and these low salaries and lack of money with which to promote business during this period from 1933 to 1937 would be to greatly reduce the efficiency of the market, and to greatly decrease the volume because we have not the money to go and get this business and look after our customers as they wish us to do. Assuming that directs handled by packers and slaughtered at Kansas City have increased during this period, I would say it would b advantageous to the volume of business handled by market agencies at Kansas City if they were able to make it known generally to the country that the results of tests repeatedly made showed that due to greater shrinkage, the weights taken by packers as compared to weights taken at the market produced net returns less than for animals sold at the market, and that the greater shrinkage would be more than the total of the marketing costs at Kansas City. That would be very valuable information for us to put out if we had facilities to do so or rather the money to expend to do so because, naturally, the shipper in the country could be informed as to the place wherein he could obtain the most money for his livestock, naturally that would be where he would go.

To reduce, as shown by Exhibit A–5, from the average amount of approximately $240,000 a year expended for advertising in the period between 1923 and 1929, to $52,851.64 as the total expended by all agencies as shown by this exhibit in 1937 has
1534 had, in my opinion, a great deal to do with the reduction in volume of business transacted at the Kansas City Stock-

yards. The fact that we are not able to spend money for advertising to obtain business the same as other large lines of business, it seems would result in a reduction of the volume. I think it has resulted in a reduction of the volume of business.

I have examined statistics relating to the livestock population in the territory tributary to the Kansas City Market during the years in question.

Respondents' Exhibit A–11 which you hand me, entitled "Kansas City Commission Agencies Business Trends," showing changes in the livestock population based on statistics already introduced in evidence and revenue headage at Kansas City for the six states said in the order to be tributary to Kansas City was prepared under my direction. It was taken from these statistics already introduced in evidence.

You hand me Respondents' Exhibit A–6. Under my direction revenue from cattle, hogs, and sheep was equalized on an income-producing basis according to tariffs in the periods there referred to. In the period 1928 to 1932, the tariff or schedule of rates and charges in effect at Kansas City, up to May 23, 1932, was Schedule No. 2. That was the tariff in effect in 1930 when this investigation was first started. I understand that operations for the years 1929–1931 under that tariff were audited by the Government. Government Exhibit No. 115, page 41, for commissions, pages 4, 5, and 6 for headage, was used as the basis for these figures equalizing income from hogs and sheep to income from cattle. That related to the period from 1928 to May 23, 1932. I don't recall what the respective per head revenue was as of 1931 as shown thereby for the period prior to 1933.

As to the period from May 23, 1932, on to 1937, as basic data used in developing the figures, Mr. Roberts made a test and the Exchange made tests on, I believe, 12 firms covering the period of 1934 to 1937. The tests actually applied to 1535 transactions occurring, in the case of the Exchange tests, from June 1936 to June 1937. As to the per-head revenue in the case of those 12 firms by species the test showed 45.04 cents per head for cattle and calves, 21.73 cents on hogs, 8.67 cents on sheep. I can't remember the figures, whether it showed a lower per-head revenue applied to that period than Mr. Roberts did as applied to the 1931 headage. This test made from June 30, 1936, to June 30, 1937, shows less on cattle, slightly more on hogs, and slightly more on sheep than did the Roberts' test. A figure intermediate between the two tests as to cattle and calves was selected by judgment for the purpose of this equalization. They used 46.44 cents on cattle and calves and 21.73 cents on hogs, 8.67 cents on sheep, the latter two remaining the same as the

other test. As the percentage of calves in the total number of head of cattle and calves goes up at the market, the gross income realization per head as to cattle and calves goes down. It would naturally work that way. And if these figures that have been introduced in evidence showing increase in calves from 15 percent to approximately 19 percent of the total headage of cattle and calves are accurate, it would reduce the per-head revenue for cattle and calves as a whole. I cannot answer definitely but I think the column of figures appearing under the heading "Equalized total" in respondents' Exhibit 11 was calculated upon the same basis as the corresponding figures were produced in respondents' Exhibit A–6. I think the same equalization factors were employed.

Examination conducted by Mr. DAGGER (as basis for objection):

I stated that this information was compiled under my direction, that is, the information in respondents' Exhibit A–11. When I say under my direction I mean I asked that it be prepared for me. I asked different accountants in our building and Mr. Homer Burns. They showed me the results. My instructions to Mr. Burns and the accountants were to prepare statements to show trends, costs, income. I asked them to fur-
1536 nish trends, costs, incomes, from 1928 to 1937 and from 1931 to 1937. I didn't instruct them how to prepare it. I instructed them to prepare certain information that would reveal the information that we wanted strictly against our market or these twelve firms. As to the extent of supervision exercised by me, I checked all figures that I had time to do, talked with them about them, did none of the actual work myself. I checked the figures by division and multiplication and subtraction and such items as that. I checked the figures they brought me against sheets which I have reason to believe were taken from the Government records. I was told that they were taken from them. The actual Government record I did not see. The Government record I have in mind is your compilation of returns that we make every year. I didn't have before me the reports made by all these commission firms to the Government when these figures were brought to me by the accountants. I checked them later. After these were prepared, I checked against the information which I mentioned before was given to me as having been taken off the records which the Department makes from our returns. The information they brought to me consisted of income and headage, costs, all the different items that are shown on these exhibits. They showed me the revenue per head produced by the tariffs. I presume I could check that against the

reports which were furnished to the Government. I don't remember that I did that particular thing.

Respondents' Exhibits A–6, A–7, A–8, A–9, A–10, and A–11 were received in evidence.

Direct examination (continued) by Mr. GAGE:

I think the statistics appearing in Respondents' Exhibit A–12, which you hand me, were similarly taken from the exhibits already introduced in evidence, showing on a percentage basis changes between the years 1928 and 1937, and 1931 and 1937 in the various items of income, expense, owner operating return set forth and summarized on those exhibits, and also that the total headage of livestock population shown on the previous exhibit has been reduced to the cattle equivalent covering
1537 the same years on the same basis as in the former exhibits.

This is purely a mathematical calculation upon the basis of previous exhibits made under my direction and at your request.

Respondents' Exhibit A–12 received in evidence.

As I stated, I have examined the summaries that were offered in evidence of the annual operating and financial reports of the agencies at Kansas City that had been filed with the Secretary of Agriculture. I think the morale of employees in general at the Kansas City Stockyards is being lowered through the fact that salaries have been greatly reduced which has had a bad effect upon the efficiency on the market in the way of selling livestock, yarding livestock, and weighing livestock.

In 1933 the Producers Commission Association and the Farmers Union Livestock Commission had on deposit with the trade practice committee, referred to in the record, Government bonds in the case of the Farmers Union amounting to $10,000 to guarantee compliance with the rules of trading obtaining on the market. Those Government bonds have been drawn down by these agencies during the period intervening between 1933 and 1937. The Farmers Union notified us that they needed their bonds for other purposes and I further understood the fact that their capital or reserve which had, I think, exceeded $50,000, had depleted to the extent where they needed these bonds for other purposes. The Producers Commission Association also drew down their bonds and do not operate through our clearing house at the present time. During the period that those Government bonds were on deposit these two agencies should have received the income therefrom. We did not take it.

1538 Cross-examination by Mr. DAGGER:

I am president of Ryan and Robinson. My duties are managerial, I suppose. I help anybody I can, do any work

I can, go to the yard, if it is necessary go to the country and solicit, do anything that is necessary to obtain business. I do not sell livestock. I presume I might be classified as primarily an office man because I spend most of my time in the office. I do not have any connection with any other commission firm in the Kansas City market. I have the intimate knowledge of several different firms down there, simply told to me in the discussion of our conditions down there. They tell me how they are running—what effect it is having on them; I do the same with them. I mean the effect of the reduced rate—what it is doing to them, how they have had to struggle, how they have had to hire men on contingent bases. It would be rather a guess as to how many firms I have very intimate knowledge of, without stopping to think over with whom I have talked about these things. I presume ten or fifteen firms, probably.

In the financial reports we receive from these firms about twice a year they give us balance sheets—I mean a trial balance confirming. From that we glean, if we can, whether they maintain in their business enough money to take care of shippers' proceeds, railroad charges, things of that kind, so as not to endanger the bonding companies which bond them. We have consistently received those reports every six months. I do not always examine them. Sometimes, I might be out of town when the finance committee goes over them. If this committee goes over these reports and finds something wrong, it is generally discussed with me.

I could not say when I first discovered the situation involving the Harry Kennaley Commission Company because at the time that came up I did not sit on the committee. It was brought out

by the finance committee, which I did not attend at that
1539 time. I learned of it later through hearsay. I could not say about what time that was. It would be a guess. I had examined the report, once when it had come up previously. His report was all right at that time as far as I was able to determine. The situation with respect to Harry Kennaley probably developed from the fact that there might have been obligations that were not set up on the books, not shown to us or something of that kind. It might have been that his report was not accurate. I don't know that it happened that way but I say that is the way it could happen.

I gave you a list of firms here which went out of business over a certain period of time, beginning with Mr. Morgan, I believe, of the Morgan Sheep Commission Company. The question was asked me what firms retired from business and if I knew for what reason. I answerd that, only as I say, that some of them

said that they could not operate under the allowance for expenses that they had; they would have to quit their work and work for someone else or go into another line of business. That was the general discussion. I think, probably, it would apply to all these firms. I think I might even broaden it to say that they all so expressed themselves or would have if I had discussed it with them. I understand that Mr. Kennaley, when he went out, left the shippers' proceeds account short by something like $19,000.00. I don't know how that result was brought about because of the rates under which Mr. Kennaley was operating. I don't think I could explain just how Mr. Kennaley did it, because I did not examine his books. I would think he had something around three or four thousand dollars impounded at that time probably. That is a guess. I could not explain how the impounding of that much money would cause him to be short upwards of $19,000.00 to shippers because it would take something more than that to accomplish that. It could not cause the whole thing. He could not pay those debts off with three thousand dollars. I don't
1540 recall that I have any more specific information with respect to any of these firms you mentioned than I have with respect to Harry Kennaley. There were probably firms which went out of business between 1929 and 1931–1932 but I don't recall the dates. I don't know whether or not prior to this period which I was testifying on this morning, firms retired from business because of lack of capital. That is getting pretty far back. That might be beyond the time when I was treasurer of the Exchange. I have been treasurer since 1926 but at the present time I don't recall back that far. I stated as an opinion in my direct examination that some firms at the market would be unable to continue in business if the impounded funds were not returned to them. That is based mainly on the condition in my own firm. We have taken losses, probably with the exception of one year, for, I would say, four years. I think that information is on your reports that you have in your possession. When I say losses, I mean in operating the business. We charged a nominal salary, but when the year was up we had lost money; but we paid our help normally what they had been drawing because we did not want to lower the efficiency and we could not operate under the cost allowance that we had and pay those men their living wage. We set up for the ownership every year a salary account of what we agreed upon. We did not use what you would call a drawing account, but a monthly salary. In other words, we agreed among ourselves as to the yearly salary. It would result that the net loss which I spoke of was the net loss after we had allowed ourselves those salaries. I could not give you

the exact figure for how much the firm has impounded now. Approximately it is $16,000.00 Another factor which has affected our business besides the rate reduction is the impounding. Other factors during this period resulted from lowered expense allowance—we were not able to go out and solicit business; not able to advertise as we did before; in other words, we have almost reached the point where we must wait and take what comes in the
1541 front door. I don't have the figure for what we paid for advertising in 1933. They are all in our report. I don't remember the figures for advertising during any of the years from 1933 to 1937. They are all in our report. I don't remember the amount spent for travel or entertainment during that period in any one year. I can't carry those items in my head. As I say, they are easily obtainable. I do not recall the volume of business handled by my firm during the particular years. The only thing I could answer to that is that there has been a large reduction in the volume. The volume does not depend entirely upon the amount spent for advertising and travel, but it affects it greatly. I don't know in which year of these five years we spent the most money for travel and entertainment and advertising. I can only guess which year was the lowest volume year for my firm, but I would say 1937. I would guess the next lowest year would be 1936. I attribute our decline in income and these losses to the reduction in the rates, or to the necessity of impounding funds, thereby curtailing not advertising alone, but curtailing all operations. I have no definite information here which I can give you to show what our curtailments were upon which I base that statement. I have no contact with the actual buying and selling, yarding, and other operations of the other commission firms on the market except that I see them moving and selling and see it done. I don't do any of it, of course, I merely see it operating. I think I would be able to pass judgment upon or form an opinion with respect to the efficiency with which these firms are handling their business if I were down and watched some firm operate. I do not go down and make a study of the firms for that purpose. My firm has not ceased to communicate with the country either by way of market letters or personal visits. We continue that practice at a loss.

I have nothing definite with respect to the salaries paid by
1542 other firms to their employees, merely a conversation probably with the owner who told me he had reduced salaries and might not give me any figure. I wouldn't say that all the owners of all the firms have discussed that matter with me. In connection with respondents' exhibits 6 and 11, wherein this equalization figure is referred to, the tests made by Mr. Roberts were those which he made and concerning which he testified at the

previous hearings. Any additional information which I have with respect to tests came from the accountants or bookkeepers of these 12 firms of Mr. Burns. For one year they took a sample of 12 firms. The other tests I think were all over a considerable period. They took the business of 12 firms and went through it. The tests were applied to 12 firms. I understand they actually took the entire business of each of those 12 firms. I don't know definitely whether they did or not. I didn't do it myself. It came to me in information that I considered reliable, is all I can say. If I remember the procedure, the basic figures off the firms' books were probably gotten up by their accountants and passed on to Mr. Burns and any one else that might be helping him. I think that was the procedure. Generally the report came to me from Mr. Burns; I think, in all cases.

Redirect examination conducted by Mr. GAGE:

Respondents' Exhibit A–13 which you hand me, is a comparison of bargained salaries where an employee was engaged by the same firm in the years 1931 to 1937, Government's Exhibit 115–B, 1931, P. S.–3, 1937, equated to an annual basis. You requested it, I know that, but I don't know that I ordered it done. The statement itself says that the figures given in the column headed 1931 and the column headed 1937 are on an annual basis. It states that the 1931 salaries are predicated upon the showing in Government's Exhibit 115–B for the year 1931, and the salaries in 1937 on subsequent reports. It appears to be merely an assembly of those figures.

1543 Mr. FRANK WITHERSPOON, a witness called by the respondents, after being sworn, testified as follows:

Direct examination conducted by Mr. GAGE:

My name is Frank Witherspoon, Kansas City, Missouri. I am in the livestock commission business. I testified at the former hearings in this case. I am associated with the Witherspoon Commission Company. With the exception of 18 months, I have been in the market agency business in Kansas City 36 continuous years and four years part time. At the present time I am one of the owners and work in the cattle department and also in the country. We have funds impounded with the Federal Court in connection with the proceedings brought when the order was held invalid.

I was president of the Livestock Exchange during the year 1923. I am generally familiar with the operations of market agencies at Kansas City and have been so familiar through the years 1933 to 1937. Shortly after we received the order from

the Secretary I was made chairman of a committee to figure out what effect that would have on the Kansas City business. After applying it to our business and showing the results to Mr. Willard Olander, who at that time was president, I convinced him how severe this rate would be, and in our particular case I took the tentative findings, and I recall, so far as cattle were concerned, that the cost on a car basis was around $13.20, and the cost allowance on cattle and calves, as I recall, was around 40 cents a head. We made some applications to our business, and as I recall, we could not operate against our volume with that particular cost allowance, but we decided to go ahead and make an effort to do so and did operate and did try to give the best service we could, but in order to give service we had to spend money out of our surplus until the latter part of 1934 we saw that we could not maintain our forces, pay the salaries that we were then paying, against the order of the Secretary, so we were forced to the position of reorganization. We let go a good many of our
1544 men; I became more active in the yards and country in order to make ends meet. I had to even go further than the operation on the market because of the oppressive rate; I was forced to become active in the country in the sale of livestock on a commission basis in order to maintain a respectable salary. We have continued that policy on a two-way service of country and town in order to make ends meet under this order. I believe, in brief, that is just about all I can say as to how it has affected us. At one time during the peak level, I saw the time I drew as much as $7,000, but during this period, my salary has been as low as $250 per month up to the equivalent of about $4,000 a year. It varies. When I was referring to a two-way business, I meant negotiating sales of livestock in the country, livestock that did not at any time reach the Kansas City Stockyards.

I have always been opposed to country selling because I figure that it affected the market because buyers, who logically should come to the market, would have to be taken out to the country to look at cattle and you would naturally, through that operation, have a tendency toward breaking down market prices. But, in order to live, I began figuring out how I could sell cattle, especially light weight cattle in the country at 50 cents a head, as that 50 cents a head was gladly paid by the people in the country and it was more than the commission on light weight cattle would yield me in town. I mean under the order. Those sales in the country were made in large lots of cattle. They have been so made by me. I feel that it is not a good thing for the producer on the market. I am not in a position to say that the volume of those sales is reported upon our P. & S. 3 report because the

records themselves speak better than I could, and because I don't know how that report is made. I don't make it up. I have looked over the summary of those operating and financial reports made by all agents at Kansas City that have been introduced in evidence here.

Individually speaking, as it so relates to our particular
1545 firm, I would say that I have, in general, covered the fact that through these reductions or the nonacceptance of that order, we have had to do the best we could and, frankly, I have to admit that it has affected our efficient operation under this order that we did not accept. I mean it has affected us in the case of our individual operations. In this way: in the sale of cattle, in my opinion, we got just as good price for most of the cattle, but at times, because the urge on us to go and weigh cattle when the market was in progress and when we had a limited number of yardmen to weigh those cattle, we have missed a few sales. That has affected us in this way, I notice, particularly, in the curtailment of yard work. If we had accepted the Secretary's order, that deficiency in yard work reflects, in my opinion, also as to the lack of fills of cattle, which means money lost to the trade. It has affected the morale of the business because if your men are depressed naturally they cannot give quite the efficient service they could if you pay them a decent wage; but, in our case, we feel that we will get this impounded money and we have been gambling some. I am frank to say that if the impounded money is not returned we will have to borrow some on our personal property to maintain the business. I think the salaries paid employees under conditions as they existed prior to November 1, 1937 at the Kansas City stockyards and after July, 1933 were low compared with the cost of living and compared with other things and compared to what men get in other comparable lines of activity. I know of instances where firms have agreed to compensate employees for salary cuts upon the return of the impounded moneys. It is my judgment that the difference between the decrease in volume handled by agencies at Kansas City, despite the increased cattle population, results from livestock going to country sales rings, to smaller competitive markets, and to direct buying. I am familiar with the charges made at some of these country sales rings or community sales. When it comes to the sales pavilion or what we call country sales those rates of commission
1546 range, as far as my knowledge goes, all the way from three to five percent. Some of these smaller competitive markets, such as the Springfield, as near as I recall, is around 75 cents a head, but the record would be the best evidence in that case. I mean on the cattle exclusive of calves. The consignments in individual sizes run relatively small at those

smaller markets, because they do not have hardly any rail business at those smaller markets, and they do not have so many of these big transport trucks. They are smaller trucks. I have never heard to my knowledge of community sales or sales rings, or sales pavilions, that operate on less than 3% of the proceeds sold.

It is my opinion that the smaller or lower budget for advertising will affect the volume at the market. I know I looked at two items or two functions under that order. One of them was business getting and maintaining and one was advertising. I do not recall the exact amount, but at the time I remember I drew the conclusion that it was not sufficient to maintain a very heavy volume. Our competitors who operate these so-called sales rings, community sales, and all that, go out and go after the business and contact the livestock producers and shippers not only by post cards but by telephones and otherwise. Bringing buyers to the market, feeder buyers and all that, requires contact work. I have stated in my previous testimony that I believe it is beneficial that they can be brought there to place their purchases in competition one with the other. I stated that if these buyers should come to the central markets instead of our making an effort to take them on past the market, prices would be higher. We have done what little we could to bring them to the market to help maintain the price, with the exception of the sales we made in the country where we had to do it on account of the commission charge. Regarding the objection from the stockyards company to negotiations of sales in the country I put an ad in the Western Livestock Journal, I believe it is, the paper published in Denver, advising the trade that we could bring buyers to their door.

In two weeks' time Mr. Collett and Mr. Weeks had us in
1547 their private office and threatened to take our pens away from us, or rather a large, a major portion of our pens. Mr. Collett and Mr. Weeks are officials, president and vice-president of the Kansas City Stockyards Company. As to what these employees of the Kansas City Stockyards Company do in the way of getting business into the market, I will state for the benefit of the record that I know Mr. Floyd Morgan personally who represents the Kansas City Stockyards Company. He is now located at Pawhuska, Oklahoma. I know Mr. Mercer who covers the southwestern territory with headquarters at Clovis, New Mexico, and I am personally acquainted with Mr. Meyers who works the hills of Kansas and makes his headquarters at the Broadview Hotel at Emporia, Kansas. They have other men they send out intermittently, but these men are not qualified to grade cattle or pass judgment on them as to price and weight. What the customer in the country wants is an estimate of the weight of

his cattle and what they will bring on the market, and it is up to the solicitor or a representative or appraiser to give out that information, and most generally these field men of the Stockyards Company write to some commission firm to come down and work that particular territory if they think that particular firm could get the business. By this appraisal I mean valuing the cattle at the time as to their grade, weight, and value on the market. I have been in the business 36 years and I would not attempt to appraise cattle unless I came home at least every two weeks. On my visits to the southwest I leave on Tuesday night and return Sunday night and engage in selling cattle on the market on Monday and Tuesday and then go back to the country usually at the request of some country man to come down and look at his particular cattle. Very seldom do I make what you call a direct solicitation trip, most of the trips are by request. I have had occasion when the Stockyard Company representatives have called upon me to go out and appraise for someone a bunch of cattle. I remember one case in particular. Some Stockyards men at Pawhuska, Oklahoma, called up my brother Graham and told him about a bunch of cattle that a man wanted him to
1548 go down and look at. He went down and looked at these cattle, sorted them, and spent $30 on the trip and the gross commission was $60, $60 for the five cars, leaving a net to the firm of $6 a car. I did that at the request of Mr. Morgan down at Pawhuska. I believe, so the Examiner can be more thoroughly impressed with this additional expense of business getting and maintaining, I should at least tell about one or two other concrete cases. Here this last spring a man in Texas phoned me and asked me to find out the price of silage and spring feed for his cattle; but before he bought that silage he asked me what that would do for the cattle, if it would bring them up above the rise of grass. I advised him over the phone in stockyards parlance that it bellied them down, stretched them out, and they would do better on grass. So, I got busy and had a man to buy this silage for him and then he wrote me in June and asked me to go out and see how the cattle were doing. I went out and inspected his cattle and advised him that he should feed them after the rainy season was over. Then he came up to Kansas and made arrangements for corn meal, that is corn and cob ground and cotton seed meal. He fed his cattle that ration on the grass. Then about three weeks ago he phoned me again and asked me to meet him in Emporia and go through the cattle with him and give him an idea of what those cattle would weigh on the Kansas City market and approximately what they would bring. I told him what I thought, but he was not satisfied with my idea at that particular time so he came to Kansas City and checked the mar-

ket from his viewpoint and he then told me he was perfectly satisfied for me to go ahead and sell the cattle delivered at Kansas City if I could find someone interested. Then I had to originate a buyer, take the buyer out in Kansas at his request, spend the whole day trading, starting in at about seven o'clock in the morning, and consummated the trade on that particular bunch of cattle at about three that afternoon. Those cattle were offered for sale, delivered in Kansas City, and weighed in the usual way.

Now, that is an unusual country trade but we make some
1549 of these kind of sales, but mostly the cattle we sell in the country are weighed out in the country and handled in that way. Some of those cattle were eventually sold on the Kansas City market, and I understand a buyer put a few of them in his feed lot, but I am not positive about that. This situation is typical of some of the conditions that existed between 1933 and 1937. When anyone requests it I just arrange this service of advising owners what their cattle are worth according to their grade and quality in the country without discrimination and that is all there is to it. That is generally true at Kansas City. These hungry wolves there will certainly want to do that, they want the commission.

Cross-examination conducted by Mr. DAGGER:

Graham Witherspoon and I are acting in the steer division and then during the day I go down through the cows and calves in order to post myself on the market in case I get a call to go to the country, but I am actively engaged in selling cattle the first two days of the week. We had a big organization covering several markets. We saw that the thing for us to do was just to draw ourselves into Kansas City on account of the low revenue, which we did. Then we organized a company to take over the assets of the old company and go forward with a clean slate and paid off everybody that had anything to do with the original company.

We are operating at Kansas City now as that company. We have a connection at Wichita and Fort Worth under our name, but that is what you call a trade-name agreement. Prior to reorganization, we had commission houses at Wichita and Kansas City. Back in 1919 we had five markets. This reorganization didn't particularly cause us to close the Wichita house but we felt we should and did close it. We cut the organization at the Kansas City market almost in half. Just when that order came out,

I began studying it against our volume, and I knew we had
1550 to do something and do it quick; and we did it. We buried our pride and did it. I stated on my direct examination that when this order came out we applied the tariff to our business and found that we could not operate under it with our

volume. The volume entered into that consideration in connection with the gross revenue. The record will be the best evidence as to the relative status of our volume at that time, compared with prior periods. I recall the year 1934 when we made this decision, that is, the fall of 1934, our volume had slipped some. Then in 1935 our volume was some lower, but not as much in proportion to the curtailment of our expense. We just had to get within our cloth, so to speak. In 1935 we did a fair business but a good bulk of it was this country business or, to be real frank about it, if we would cut out our country business from our town business, we would be running at a severe loss. We had never done any of this country business before because we didn't believe in it. Just dollars to me, just money to me, that is what made me do it. As I stated before, light-weight cattle at 50 cents a head in the country yields more revenue than the order of the Secretary would have if we would have if we would have accepted the order.

The example of this man who had certain cattle and sought our advice in regard to the methods of feeding it, he had five hundred head of cattle. Out of the five hundred head I sold 469 cattle to this buyer here and he shipped the balance into the market. I am able to carry on that business in addition to handling business at the market because of my experience. I am able to take care of country business and at the same time take care of my business at the market because about 50 or 60 percent of the cattle that we get on Monday and Tuesday I have seen previously in the country, and these men call me up and ask me what they will bring and I am there Monday helping them sell them. Generally I spend just two days at the market selling and then go out in the country and sell the rest of the time. We were forced in that
1551 position on account of the rate. I wouldn't be doing it if I didn't think it was a profitable business. In connection with the efficiency with which we are able to operate we have on a few occasions missed some sales. By that I mean that we have turns at the scales according to time. We have felt so hard pressed that we have maintained short yard help and on one or two occasions my brother or myself have had to take cattle up to the scales to be weighed, and while we were gone just for a few minutes the market slipped and a certain buyer we wanted to get was gone. We have even gotten set up on cattle. Well, we have gotten set up, but on the other hand we were better manned when we had our higher income and those things didn't occur so frequently as they did when we were pressed. I wouldn't say that it doesn't happen occasionally anyway. It does, but it is more since this low rate. My firm handles largely cattle and the reason we don't try to handle hogs is on account of the direct consignment of hogs.

I really believe that with the proper advertising and the proper contact in the country, together with the continuation of your cooperation here, that something can be done on that particular problem. We have a man who sells our hogs. The same man sells other people's hogs. As to whether he concentrates the volume, a Mr. Foster used to sell our hogs, but the volume slipped so, we took him over into the cattle alley. In my opinion our lower budget for advertising has the tendency to reduce volume. I think that has happened with respect to my own firm because we used to send out a lot of literature. We have been so hard pressed that we just naturally try to economize and we have had occasions where men would come into our office and say, "If you would keep us posted, we would have sent you our business, but why haven't you been writing us and why haven't you been doing this and that?" The trend of the volume of my firm during the period from 1933 to 1937 you will find lower, but if you would take some
of these sales that we made to men on the market, which
1552 would appear in the stockyards' record, that could possibly make that statement of mine slightly incorrect. Regarding our budget for advertising, the way we figure is this: that we have to keep our lists down right to the active people who ship to us and that is the way we have changed our system. In other words, we keep a card index of our customers, whereas if we had had more money, and we did in the past, we would hunt new customers in new territory to the market. But now the way we do, we confine our efforts to our own trade principally, and these sales rings, and these country markets have an opportunity to tear us down on that kind of a plan. I couldn't tell you in dollars and cents what our present budget is or what it was in 1937 for advertising. You would have to look at the record. I can tell you just the system we have used that reflects the budget. You would also have to look at the record to see how much less we spent in 1937 for advertising than we did in 1933. The amount of business we have lost or the extent of the reduction in business brought about by this curtailment in advertising is hardly a visible loss, except with a few exceptions, a few consignments that you know about. I can't give you any definite figures showing the amount of business which we have lost from year to year during this period because of reduction in advertising. I do not have any percentage ratio in mind. It is my opinion that the reduced budget in advertising has caused a decrease in the volume of our business. I do not know definitely just how much we have decreased our budget for advertising and I cannot tell you definitely the reduction in our business caused by that reduction. I know that we actually did reduce our advertising during this period because of our system, we were endeavoring to do it, but the figures them-

selves will relate whether I made a correct statement or not. We have, as I told you, a card index in our office. We used to advertise in papers—we cut out all that. We used to advertise in
1553 convention numbers of magazines. We have cut all that out. We used to advertise in the Kansas City Star. We cut that out. We used to advertise some in the Drovers Telegram. We cut that out. But those reductions relate back to just prior to that order and since that time we have confined ourselves largely toward functioning through our regular customers who ship to us. Once in a while we break a plate in addressing them and whenever we do that, that man does not receive our market information and in some cases we have lost business that way. If we had a regular, general plan of advertising we could work toward correcting things of that sort.

We do not sit down at the beginning of the year and work out our budget of expenditures for the coming year and allocate a definite amount that we are going to spend for advertising. Our plan is, as I told you, to be as economical as we can and to cut out certain items, to try to keep within our allowance as near as possible, of cost as you point out, and we have been able to do it. We had last year so many cars of cattle, we had last year so much gross revenue, we had last year so much in salaries, we had last year so much in yard help, and on down through the functions of the business. Now, we look over the trade territory, and we think now with this constant expense we have, we have got just so much money, according to last year, left to spend. We don't reduce those to figures. We are not putting a pencil to all this stuff, we are trying to use our experience as a guide and not figures. I entertain the opinion that we would increase our volume if we spent more money for advertising. I can't say how much more we should spend in order to get the volume we want. I would have to give that some consideration because I haven't had the money so far to spend, and I would want to know whether it was available before I spent the money. I cannot tell you now but if you will give me my records in about an hour I will come back with an answer. It looks like that with this chasm
1554 between us—I might as well open up and tell you what I think. I have never been able yet to honestly figure your costs, that is, functional costs, and how you arrive at them, and I have studied them conscientiously. Now according to those records, it costs us about 62 cents a head to handle our cattle and calves, and you give us an allowance of 40 cents a head. Now when you go into our costs of handling our cattle and calves, the doggone thing jumps clear up to 62. Now you are trying to get me to go ahead and allocate the costs of those various functions when I don't think that is the right way to go at costs. You don't give

the firm unit itself any consideration or the experience on the market, and that is the reason I am hazy on that because I don't agree with you on your costs. I can't answer that question and I am not going to try to answer it. I would want just as great an increase in volume as I could handle with the help that I have to perform efficient service. I could handle more volume. I don't know how much more I could handle than I am handling now. As I told you before, I haven't been studying those divisional, functional costs. I have been studying the unit as a whole and I can not answer that. I know that decreased expenditures for advertising caused a reduced volume because I have reduced volume, and I will have to check back against the record and bring it in here to show you, and I can do that.

As I recall we have impounded somewhat over $20,000. I don't recall the exact figures, but it is over $20,000. I am familiar in a general way with the operations of other commission firms on the Kansas City market. I cannot tell you about the amount which any other commission firm or firms set apart by way of a budget for advertising. I do not know the extent to which any of them has changed the amount spent for advertising during this period. The records of the Stockyards Company reflect the extent to which any of them has had a change in volume of business during this period of time. I have no definite knowledge of the extent to which their change in their advertising policy has affected the flow of livestock to their firms specifically.

1555 When I make trips to the country, it is usually at the request of somebody. I used to go out and solicit more than I do now. I have followed the policy of going out on request for a good many times, but the majority of my time spent in the country is on special deals. Some other members of my firm now make trips to the country.

Redirect examination conducted by Mr. GAGE:

I was a member of the so-called rate committee that represented these different agencies in connection with the handling of this proceeding or the former proceeding. As I recall the making of a reduction in rates as evidenced by the tariff No. 3 of May 23, 1932, when we got into the problem of the No. 3 tariff, we thought, from a request made indirectly from Secretary Hyde, that we were to reduce these rates ten percent. Then our committee got together and we honestly readjusted our scale of rates so that through application it reflected a ten percent reduction. We did make tests in the application of it at that time and it showed around ten percent, and in some cases it showed as high as fifteen and sixteen percent. We filed that tariff in the case of my firm. I was not down here when the accountants received

that tariff and reported to the Secretary that he was being deceived; that it only reduced rates four percent.

In the fall of the year when we have these peak runs, for example, of Monday a week ago, or last Monday, a good many of the employees, I found, started working at about 6:00 or 6:30 in the morning, and the offices are not closed sometimes until 10:00 or later at night. For example, last Monday a week ago I arrived at our office at six o'clock. We were working in the office and out in the yards all that day and up until 10:30 that night, when I went home, leaving the bookkeper there to make out other account sales that had not been sent out to the customers, with the understanding that I would write the letters the following morning about these incomplete account of sales. That is the general situation that is prevailing there during the fall of the
1556 year when you have the peak loads. Our reports, annual reports, have been filed here with the Department although I didn't prepare them. I am reasonably sure they are accurate in every respect. I am willing that they be available to the record here in any way that Government counsel sees fit to use them.

Reductions in advertising expense and other expenses commenced in the period when we put in effect Tariff No. 3. In other words the business had already started to slip when we were trying to trade with Secretary of Agriculture Hyde.

Respondents' Exhibits A-13, A-14, A-15, and A-16 received in evidence.

[File endorsement omitted.]

1557 In United States District Court

Application for Order approving Narrative Statement of Evidence and Stipulations as to transmitting original documents

Filed September 10, 1940

Come now the United States and the Secretary of Agriculture, defendants-appellants herein, and request the Court to enter an order approving the Narrative Statement of Evidence filed herein on the 22d day of August 1940 and the Stipulation as to Transmitting Original Documents filed herein on the 3d day of July 1940.

THURMAN ARNOLD,
Assistant Attorney General,
WENDELL BERGE,
Special Assistant to the Attorney General,
Attorneys for Defendants-Appellants.

This 6th day of September 1940.

Petitioners-appellees and New Amsterdam Casualty Company, appellee, hereby acknowledge receipt of a copy of the above

Application for Order Approving Narrative Statement of Evidence, etc., and consent to the entry by the Court of an order approving said Narrative Statement of Evidence and said Stipulation as to Transmitting Original Documents.

FREDERICK H. WOOD,
JOHN B. GAGE,
Attorneys for Petitioners-Appellees.
E. R. MORRISON,
HOMER H. BERGER,
Attorney for New Amsterdam Casualty Company.

[File endorsement omitted.]

1558 In United States District Court

Order approving Narrative Statement of Evidence and Stipulation as to transmitting original documents

Filed Sept. 10, 1940

Counsel for defendants-appellants in the above-entitled cause having applied for an order approving the Narrative Statement of Evidence and the Stipulation as to Transmitting Original Documents, filed herein in connection with the appeal allowed to the Supreme Court of the United States, and counsel for the several appellees having consented to the entry of such order, the Court, being advised in the premises, orders that the Narrative Statement of Evidence filed herein and the Stipulation as to Transmitting Original Exhibits, which, taken together constitute and comprise a true and complete statement of all the material evidence offered and received at the trial hereof, as agreed upon by the parties, be, and hereby are, approved. And the clerk is ordered and directed to transmit to the Supreme Court of the United States the exhibits and documents set out in said Stipulation.

This 10th day of September 1940.

ARBA S. VAN VALKENBURGH,
Circuit Judge.
ALBERT L. REEVES,
District Judge.
MERRILL E. OTIS,
District Judge.

Consented to:
FREDERICK H. WOOD,
JOHN B. GAGE,
Attorneys for Petitioners-Appellees.
E. R. MORRISON,
HOMER H. BERGER,
Attorney for New Amsterdam Casualty Company.

[File endorsement omitted.]

1559 In United States District Court

Before VAN VALKENBURGH, Circuit Judge, and REEVES and OTIS, District Judges

Opinion of the Court—Filed October 29, 1934

OTIS, District Judge, delivered the opinion of the Court:

These are fifty-nine cases in equity contemporaneously initiated in this Court, submitted together and now for decision after final hearing. The prayer of the petition in each case is for injunctive relief against the enforcement of a certain order of the Secretary of Agriculture, dated June 14, 1933, fixing maximum rates and charges for stockyard services rendered by the petitioners at the Kansas City Stockyards in Kansas City, Missouri.

The business of each of the petitioners is that of a livestock selling and buying (or marketing) agency. It is a business affected with a public interest whose rates and charges for services rendered by it to its patrons are subject to governmental regulation. Since the business of each of the petitioners directly affects commerce among the several states Congress is authorized by the Constitution to legislate touching such rates and charges. Congress has done that in the so-called Packers and Stockyards Act (42 Stat. L. 163), providing in that Act that such rates and charges shall be such only as are reasonable and delegating to the Secretary of Agriculture the function and power of determining what rates and charges are reasonable. The validity of this legislation has been determined by the Supreme Court (Tagg Bros. 1. United States, 280 U. S. 420) and is not questioned in these cases.

The Packers and Stockyards Act provides that—

Sec. 310. Whenever after full hearing upon a complaint made as provided in Section 309, or after full hearing under an order for investigation and hearing made by the Secretary on his own initiativve, either in extension of any pending complaint or without any complaint whatever, the Secretary is of the opinion that any rate, charge, regulation, or practice of a stockyard owner or market agency, for or in connection with the furnishing of stockyard services, is or will be unjust, unreasonable, or discriminatory, the Secretary—

1560 (a) May determine and prescribe what will be the just and reasonable rate or charge, or rates or charges, to be thereafter observed in such case, or the maximum or minimum, to be charged and what regulation or practice is or will be just, reasonable, and nondiscriminatory to be thereafter followed; and

(b) May make an order that such owner or operator (1) shall cease and desist from such violation to the extent to which the Secretary finds that it does or will exist; (2) shall not thereafter

publish, demand, or collect any rate or charge for the furnishing of stockyard services other than the rate or charge so prescribed, or in excess of the maximum or less than the minimum so prescribed, as the case may be; and (3) shall conform to and observe the regulation or practice so prescribed.

Pursuant to the provisions of the Act the Secretary of Agriculture on his own initiative on April 7, 1930, ordered an inquiry into the reasonableness of the rates and charges of the petitioners for stockyard services rendered by them. A hearing followed before an examiner designated for that purpose. Testimony was taken by him which fills 6,721 typewritten pages in addition to which 159 exhibits were offered in evidence. Followed an oral argument before an "Acting Secretary of Agriculture." Thereafter, on May 18, 1932, the Secretary of Agriculture issued an order fixing the maximum rates and charges. A petition for rehearing was granted July 15, 1932. At the rehearing conducted by an examiner testimony was taken which fills 3,091 typewritten pages in addition to which 111 exhibits were offered in evidence. Followed a second oral argument before an "Acting Secretary of Agriculture." Thereafter, on June 14, 1933, the Secretary of Agriculture made and issued findings of facts and the order based thereon fixing rates and charges which is now attacked. A petition for a rehearing as to this order was denied.

The rates and charges of petitioners which were in effect on June 13, 1933, and which the Secretary held were unreasonable were in the form of a fixed charge per head of livestock bought or sold, the charge varying with the kind of livestock and with the number of animals involved in any transaction. Thus, for selling calves the charge was thirty cents per head for a consign-
1561 ment of from 1 to 20 head and twenty-five cents per head for all over 20 head. The maximum charges ordered by the Secretary were in the same form. For illustration, the Secretary's order required that the maximum selling charge as to calves should be: thirty-five cents per head in a consignment of one head, twenty cents a head in a consignment of from 1 to 40 head, five cents per head for all over 40 head.

We preface with this brief preliminary statement our consideration of the issues.

In so far as the subject has yet been developed in judicial opinions there are possible only five attacks on such an order as that with which we are here concerned and the petitioners have made all of them save one. They are: (1) That the statutory procedure was not followed; (2) that the findings do not support the order; (3) that the findings are not supported by the evidence; (4) that erroneous rules of law were followed to reach the find-

ings; (5) that the rates and charges fixed in the order are confiscatory and so violative of constitutional rights. Tagg Bros. v. United States, supra; Interstate Commerce Commission v. Illinois Central R. Co., 215 U. S. 452, 454.

The Procedure

1. Before the Secretary lawfully can make an order of this character he must accord a "full hearing to the interested parties." Sec. 310 of the Act. In the petitions it was alleged that a full hearing was denied in that: (1) each and every of the petitioners was denied a separate hearing; (2) that the Secretary of Agriculture in person did not hear arguments on the evidence but without authority in law delegated that duty to assistant secretaries designated as Acting Secretaries; and (3) that the Secretary signed the order without reading the evidence. On a preliminary hearing we sustained a motion to strike these allegations from the petitions. We think it is unnecessary now to elaborate the obvious observation that the theory of these allegations is supported by nothing in the Act and that a construction of the Act consistent with that theory would destroy it altogether as a measure capable of practical administration.

Findings Support Order

2. The Secretary made 162 findings of fact upon the evi-
1562 dence heard at the original hearing and at the rehearing. No contention is made but that these findings support the order. Unquestionably they do support the order and that fully.

Findings Supported by Evidence

3. The business of a livestock agency is of a personal service character requiring little invested capital. To arrive at what are reasonable rates and charges for the services rendered by such an agency at a given place, as at the Kansas City Stockyards in Kansas City, Missouri, the following factors must be considered: (1) the total volume of business to be transacted; (2) the number of men required for the efficient handling of that business; (3) the reasonable cost of handling the business, including reasonable compensation of the men necessarily employed and other necessary and proper costs; (4) the capital investment required for the efficient handling of the volume of business reasonably to be expected; (5) what is a proper return on the capital so invested; (6) what is a reasonable compensation for management and a reasonable profit. The findings made by the Secretary included all of these factors and every other conceivable factor

necessary to be considered. Some of the findings are challenged as contrary to the evidence.

Save possibly where the issue of confiscation is for determination the settled rule is that the findings of the Secretary in a proceeding of this character "must be accepted by the court as conclusive, if the evidence before him was legally sufficient to maintain them." Tagg Bros. v. United States et al, 280 U. S. 420, 444. The court is not concerned with the weight of the evidence, with whether its judgment concurs with that of the Secretary, but only with the question: is any finding essential to the order under review unsupported by any substantial evidence?

With this rule in mind we have gone to the record, with the aid of briefs submitted, and have found therein substantial testimony to support every challenged finding, nor do we find any justification for the contention of petitioners that in arriving at his findings material and relevant evidence was ignored. The important and essential findings, such as, for example, how many hogs an efficient salesman should sell in a given time, what are reasonably compensatory salaries salesmen should receive, what costs are legitimate and what unnecessary, what wastes may be elim-
1563 inated, indeed almost every finding that was made except those which were merely statistical, clearly depend upon the application to the testimony of the judgment of him charged with the duty of making findings. That duty the law imposes on the Secretary. We cannot overturn his judgment as to such matters when there is evidence to support his findings.

Claimed Errors of Law

It is true that such an order as the one here attacked must be set aside if it rests upon an erroneous rule of law. Tagg Bros. v. United States, 280 U. S. 420, 442. The petitioners assert the applicability of this principle to these cases, but just what erroneous rules of law the petitioners claim were applied by the Secretary we have had some difficulty in gathering from the petitions and briefs notwithstanding the great labor able counsel for petitioners obviously have given to their preparation.

There is no contention that the subject matter sought to be regulated was not within the Secretary's jurisdiction under the statute and no allegation, therefore, of any such fundamental legal error as a misinterpretation of the statute would have been. The contentions, as best we can state them (they purport to be set out in Subdivision VII of each of the petitions), are the following:

A. The costs used by the Secretary were arrived at arbitrarily and in disregard of the facts. Clearly this is not a matter of

applying an erroneous rule of law, but a matter of whether the evidence supports the findings.

B. The Secretary ruled rightly that the reasonable rates to be fixed should include a profit but erroneously that compensation allowed for management and the carrying of uninsurable risks included the element of profit whereas the cost of management and of carrying uninsurable risks are legitimate expenses and the petitioners are entitled to something additional as profits. The answer to the contention is that if it be conceded that it was error to rule that the allowance for management and the cost of carrying uninsurable risks necessarily included all the profit to which an owner is entitled in truth the rates fixed had an additional spread, above all costs, including the two specified, which spread allows and provides for the alleged omission.

1564 C. The Secretary rightly ruled that the petitioners were entitled to a return on capital investment, but erroneously excluded any allowances for going concern values. Such is the contention. The evidence whereon the contention is based is to the effect that the methods and practices used by the petitioners were worth (not that they had cost) $66,401. The contention is that a return should be allowed on that amount. The view of the Secretary was that while knowledge of these methods and practices was indispensable anyone is free to use them and they are not property. Such knowledge is a part of the necessary mental equipment of those rendering livestock selling and buying service. Compensation for the service includes full return for the use of the knowledge of methods and practices. It is not an element of capital investment. We agree.

D. The Secretary erroneously excluded from consideration of costs various legitimate classes of expenses, such as insurance against normal risks. We find in the record no support for this contention.

E. Various other contentions are made in this connection which we think present no errors of law.

Confiscation

Each of the petitioners claims that the order of the Secretary violates the due process clause of the Fifth Amendment in that it deprives him of his property without due process of law. Whether the presence in these cases of this issue of confiscation entitles the petitioners to the independent judgment of the court as to the law and the facts after a consideration of all of the testimony heard by the Secretary and also additional testimony offered before this Court, never has finally been decided by the Supreme Court. Tagg Bros. v. United States, 280 U. S. 420, 443. The

view that those alleging confiscation are entitled to the independent judgment of the court is supported by such cases as Ohio Valley Water Works Company v. Ben Avon Borough, 253 U. S. 287, 289; Bluefield Water Works Company v. Public Service Commission, 262 U. S. 679, 689; Prendergast v. New York Tel. Co., 262 U. S. 43, 50; Lehigh Valley R. Co. v. Board of Public Utility Com., 278 U. S. 24, 36; United Railways & Electric Co. v. West, 289 U. S. 234, 251; Phillips v. Commissioner, 283 U. S. 589,
1565 600. The view that even where the issue of confiscation is present, findings of fact made by the Secretary, if supported by substantial evidence, are conclusive, is supported by a consideration of the text of the Interstate Commerce Act to which the Packers and Stockyards Act refers and by United States v. Louisville and N. E. Co., 235 U. S. 314, 320; Interstate Commerce Commission v. Union Pac. R. Co., 222 U. S. 541, 547, and the dissenting opinion in Ohio Valley Water Works Co. v. Ben Avon Borough, 253 U. S. 287, 297, as well as by the declination of the Supreme Court to pass upon the matter in Tagg Bros. v. United States, 280 U. S. 420, 443. Whichever of these views is the correct one, it is certain that there is a strong presumption in favor of the findings made by the Secretary as well as those of any rate making body. Darnell v. Edwards, 244 U. S. 564.

If we proceed on the view that the findings of the Secretary are conclusive, if supported by any evidence, and we have determined that each of them is supported by substantial evidence, then the contentions of petitioners as to confiscation must be resolved against them with the exception of one of those contentions. All of the contentions, excepting one, are based upon the theory that the Secretary's findings as to costs are contrary to the weight of the evidence and that if correct findings were made the costs allowed in fixing rates and charges would be so much greater than those which were allowed as that it would conclusively appear that the rates and charges fixed in the Secretary's order did not adequately provide for costs and so are confiscatory. If, however, having decided that the findings of the Secretary are sustained by substantial evidence, we are bound by his findings, then we are bound also to conclude that the Secretary's order makes full allowance for all reasonable costs in the rates and charges fixed by the order. The one contention as to confiscation not thus disposed of is that the rate of return allowed by the Secretary's order on invested capital of petitioners, which is 6% on fixed capital and 7% on working capital, as a matter of law is confiscatory. We regard that contention as without merit.

If we adopt the view that, having raised the issue of confiscation, the petitioners are entitled to the independent judgment of this court based upon all of the evidence which was before the

Secretary, as well as the additional evidence offered at the
1566 trial of these cases. Only presuming that the findings of
the Secretary are correct, the same conclusion touching this issue is reached by us. Such an examination of all of the testimony as reasonably can be made, in view of its immense volume, we have made, reaching the conclusion that the essential findings made by the Secretary not only are sustained by substantial evidence but are in accordance with the weight of the evidence. Since those findings are right as to costs and since the rates and charges fixed by the Secretary's order adequately provide for costs and for a return on invested capital and for profits as to all petitioners who have shown that their agencies are efficiently conducted, the issue of confiscation must be resolved against the petitioners.

Other Matters

Contentions of the petitioners which have not been referred to specifically in this opinion have received the consideration of the Court and are resolved against the petitioners.

Findings of Fact

In each of these cases we make findings of fact as follows:

1. The order of the Secretary of Agriculture, dated June 14, 1933, fixing maximum rates and charges for petitioners as livestock selling and buying (marketing) agencies in the Kansas City Stockyards, Kansas City, Missouri, was made after full hearings accorded the petitioners, and each of them, and upon findings of fact made by the Secretary based upon the evidence taken at the hearings.

2. The findings of fact made by the Secretary of Agriculture upon which the order of June 14, 1933, was based are supported by substantial evidence.

3. Upon an independent consideration of the evidence, including the additional evidence taken by the court at the trial of these cases, the Court adopts as its findings of fact the findings of fact made by the Secretary and by reference incorporates them herein.

Conclusions of Law

The Court concludes as matters of Law:

1. That the order of the Secretary of Agriculture, dated June
14, 1933, fixing maximum rates and charges for livestock
1567 buying and selling (marketing) agencies at the Kansas City
Stockyards in Kansas City, Missouri, was made by the Secretary after a full hearing in all respects conforming with the requirements of the Packers and Stockyards Act.

2. That the order is fully supported by the findings of fact made by the Secretary and that those findings were based upon substantial evidence and are supported by the weight of the evidence and are not based upon any erroneous rules of law.

3. That the maximum rates fixed by the Secretary in the order are reasonable and that they do not take the property of petitioners, or any of them, without due process of law in violation of the terms and provisions of the Fifth Amendment to the Constitution of the United States.

Indicated Decree

Counsel for the defendants will prepare and submit to the Court for approval an entry in each of these cases a decree dismissing the plaintiff's bill and assessing the costs against the plaintiff.

[File endorsement omitted.]

In United States District Court

Before VAN VALKENBURGH, Circuit Judge, and REEVES and OTIS, District Judges

Concurring opinion

Filed October 29, 1934

VAN VALKENBURGH, Circuit Judge, Concurring:

I agree with the decision to dismiss the bills, but I feel impelled to add some additional views with respect to some features of the findings made by the Secretary of Agriculture in reaching the conclusions leading to his order.

The reason, or at least the main reason, for the difference between petitioners and Secretary, lies in the matter of cost allowances and reasonable return to owners of the business. As stated by counsel for the Secretary, the substantive questions are:

1. Are the Secretary's findings of reasonable costs plus reasonable profits supported by the evidence?

1568 2. Will the prescribed rate schedule produce sufficient revenue to cover the reasonable costs plus reasonable profits as found by the Secretary?

I think we may regard the entire controversy as resolved by an answer to the first of these questions, because the second is practically conceded, the insistence being that the Secretary's allowance of costs is unreasonable and, therefore, that the resulting profits are so unreasonable as to amount to confiscation.

To my mind, basing the allowance of salaries upon the potential ability of a salesman to sell a given number of carloads in a year is too restrictive. Such ability is not subject to bare mathematical measure. One even casually familiar with stockyard operations knows that an efficient salesman must be a man of sound judgment and experience. His duties in fostering the business of the producer in causing his product to be reared and brought to sale under favorable market conditions, are of great value and are not subject to mathematical percentage measurement. The stock does not come in such regular periods as to permit a fixed amount of sales, ratably distributed over the market year. When it does come it must be attended to by expert and experienced men to the best advantage of the grower. It is evident, therefore, that an organization must be kept sufficient to handle the business as it is presented. Such employees must be permanent for this purpose. Capable men cannot be picked up at will. They must have a steady job, and at a wage that will reasonably compensate for the experience they bring and the service they perform. In this period, when it is emphasized that labor must receive a fitting reward, it will not do to visit upon the stockyards agencies, which are recognized as necessary to the commerce, too great a burden because of depression in the stock business. In their zeal to aid the stock raiser, government agencies must not forget the men who are essential to the making of his market. This applies in a lesser degree perhaps to yardmen and others employed in the business. It is to be emphasized that, if a market agency is to do business at all, it must have and maintain an organization sufficient to handle its business when it comes. An examination of record and briefs indicates that in various ways the agencies have striven to keep costs down. Obviously it was to their interest to do so in years lean at the
1569 best. Their judgment as to their necessities should not be lightly set aside nor underestimated.

So with respect to getting and maintaining business. Certainly a considerable amount of advertising, circularizing, and personal contact is proper and necessary to keep this market prominently before the raisers and shippers of stock in this normal trade territory. The market agencies have to compete with other stock markets, with cooperatives, a percentage of whose profits go back to their members, with packers, and railroad yards, and with direct buyers generally. The fact that there may incidentally result competition between the agencies themselves is no sufficient ground for reducing the costs of such activities to an extremely narrow compass. Also, if such agencies are to continue, the owners, as they are termed, must be allowed

to receive a return commensurate with the contribution they make to the success of this market and the risks they assume.

I do not undertake to decide that the costs demanded by petitioners may not in some degree be excessive. Of course, even the most valuable operators cannot expect to make as much out of a small volume of business as out of one much larger; but they must be prepared for any reasonable eventuality, and the return fixed must not be so low as to drive too many of these agencies out of business, to the great injury of this stock market, and, necessarily, to the shippers of stock, who would most conveniently patronize it. What the future volume of business may be is, of course, speculative, and should not be a controlling rate-making factor. The evidence is that the volume is decreasing during the periods under test. It appears that the order of the Secretary would reduce the number of men employed in handling the 1931 market from 188 to about 79. There were only fifty-nine firms originally petitioning. Nine are said to have retired from business, and, from the evidence before us, a number of others will necessarily follow.

It is true that no reasonable rate can be expected to protect all who may elect to engage in this quasi-public business, without regard to prevailing conditions; but the protection of the market against lowering an irreducible minimum is as necessary to the public interests as it is to that of the stock shippers themselves.

My reaction to the presentation made is that I should have made a more liberal allowance for costs and owner
1570 return—not necessarily as great as that demanded by petitioners, and, of course, with due regard to the number of owners accredited to each firm. Five owners in the same firm cannot each expect to receive the maximum accredited or appraised to one. But it is to be observed that the Secretary has given consideration to all the elements essential to the computation of a general rate of this nature. By the statute he is given almost dictatorial power in the establishment of such rates, provided he gives due consideration to all the elements involved, does not depart from any rule of law, and provided, further, the rates established are not clearly unreasonable and confiscatory.

Just what would be the result of applying those rates to future business upon a reasonable cost basis, or as found by the Secretary, cannot be known, because it has not yet been tried. We cannot bring to the complex conditions involved the same expert judgment as is employed by what the Supreme Court has described as "a tribunal appointed by law and informed by experience." And we are forbidden to question the soundness of the reasoning, or the wisdom of the conclusions reached, and to

substitute our judgment for that of the findings and conclusions announced. I think the attack of petitioners is directed, in its last analysis, to the soundness of the conclusions reached, and I fear that we have no power to disturb them upon the showing made. Renewed application to Secretary or Court may bring relief if reasonable experience, based upon the conditions imposed by the Secretary's order, is found to justify it. In this view I concur in the decision to dismiss the bills.

[File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

Opinion on petition for rehearing

Filed June 20, 1935

VAN VALKENBURGH, Circuit Judge: In support of the petition for rehearing counsel for petitioner urged the following criticisms of the order of the Secretary of Agriculture:

1. The Secretary employed an unreasonable arbitrary and illegal method in finding total unit costs through com-
1571 bining separate reasonable functional unit costs; in this manner eliminating all competitive costs for rate-making purposes, in disregard of actual experience, basing rates upon hypothetical considerations and assumed conditions, contrary to the provisions of the Packers and Stockyards Act which requires the public livestock market to be maintained as a competitive market.

2. It is necessary to consider the individual market agencies rather than to standardize all under a common mathematical rate base irrespective of such conditions as are essential to a competitive public market.

3. This results in the establishment of a monopoly of the market and stifles competition in buying and selling upon the market, tends to weaken and ultimately to destroy the market by diverting business to other more favored markets and agencies, and the undue restriction of the agencies enabled to operate profitably.

4. The Secretary's order eliminates essential competitive costs.

5. With this elimination agencies cannot compete at a profit. This is shown by a comparison with the new costs as applied to actual business operations during the test period.

6. The Tagg case does not apply to the situation here.

In the Tagg case the court upheld an order of the Secretary in which he used typical experience as his guide for determining reasonable costs for rate-making purposes. Typical costs are

presumably based on the actual experience of the members of the industry whose rates are under consideration. In this case the Secretary employed hypothetical costs based not upon present, but upon assumed conditions which he expects may exist at some future time. In my separate opinion, when this case was first decided, I called attention to the unfortunate method employed in fixing the salaries of salesmen and other employees. I said:

"Basing the allowance of salaries upon the potential ability of a salesman to sell a given number of carloads in a year is too restrictive. Such ability is not subject to bare mathematical measure."

1572 Further consideration upon this petition for rehearing convinces that in the instant proceeding the Secretary has departed from the method employed in the Tagg case in the particulars pointed out by petitioner as stated above. Furthermore, I think the drastic reduction of advertising and other costs, essential to getting and maintaining business, gives scant consideration to the reasonable necessities of the situation as disclosed by experience. I fear the effect of these methods employed may, as suggested by petitioners, tend to weaken, and ultimately to destroy, this market by diverting business to other more favored markets and agencies, and may tend further to the undue restriction of agencies enabled to operate profitably, a result injurious not only to this market, but equally to the shippers of stock who would most conveniently patronize it. I find myself in full agreement with Judge Wilkerson in the case of Acker vs. United States, recently decided in the District Court for the Northern District of Illinois. He says:

"I do not concur in the findings of This Court which adopt in toto the findings of fact made by the Secretary of Agriculture. Some of them, particularly those relating to salesmanship costs and allowances for business getting and maintaining expenses, are, in my opinion, against the weight of evidence. However, I am not prepared to say that the findings were made without any evidence to support them. I join, therefore, in the entry of the decree dismissing the bill."

I am, therefore, constrained to vote to deny this petition for rehearing in the hope that a renewed application to the Secretary may bring relief if reasonable experience, based upon the conditions imposed by the Secretary's order, is found to justify it.

I fully concur in the foregoing Memorandum.

ALBERT L. REEVES,
United States District Judge.

[File endorsement omitted.]

1573 In United States District Court for the Western District of Missouri, Western Division

In Equity. No. 2328 and Related Cases Nos. 2329–78

F. O. MORGAN, DOING BUSINESS AS F. O. MORGAN SHEEP COMMISSION COMPANY, ET AL., PETITIONERS,

vs.

THE UNITED STATES OF AMERICA AND THE SECRETARY OF AGRICULTURE, DEFENDANTS

Before VAN VALKENBURGH, Circuit Judge, and REEVES and OTIS, District Judges

Opinion

Filed July 2, 1937

OTIS, District Judge, delivered the opinion of the Court:

The principal question now presented in these cases (the cases involve the validity of an order made by the Secretary of Agriculture fixing the maximum rates to be charged by market agencies for buying and selling livestock at the Kansas City Stock Yards) is whether the Secretary, before he made the order which is attacked, gave the plaintiffs such a hearing as they were entitled to by law. That question is presented following a remand of the cases after an appeal. The cases, consolidated for trial, had been tried and were adjudged by this court (S. F. Supp. 766). The Supreme Court reversed our decree and remanded the cases for the determination of the question "whether paintiffs had a proper hearing." 298 U. S. 468. As an introduction to our discussion of that question we here incorporate the first and certain other paragraphs of the opinion of the Supreme Court.

"The proceeding* was instituted by an order of the Secretary of Agriculture in April, 1930, directing an inquiry into the reasonableness of existing rates. Testimony was taken and an order prescribing rates followed in May 1932. An application for rehearing, in view of changed economic conditions, was
1574 granted in July, 1932. After the taking of voluminous testimony, which was concluded in November, 1932, the order in question was made on June 14, 1933. Rehearing was refused on July 6, 1933.

Plaintiffs then brought these suits attacking the order, so far as it prescribed maximum charges for selling livestock, as illegal

* That is, "the proceeding" which resulted in the Secretary's order fixing rates.

and arbitrary and as depriving plaintiffs of their property without due process of law in violation of the Fifth Amendment of the Constitution. The district court of three judges entered decrees sustaining the order and dismissing the bills of complaint. Motions for rehearing were denied and, by stipulation, the separate decrees were set aside and a joint and final decree was entered to the same effect. Plaintiffs bring this direct appeal."

The Supreme Court then indicated in its opinion the questions raised on the merits, after which the opinion continues:

"Before reaching these questions we meet at the threshold of the controversy plaintiff's additional contention that they have not been accorded the hearing which the statute requires. They rightly assert that the granting of that hearing is a prerequisite to the making of a valid order. The statute provides (42 Stat. 159, 166, Sec. 310; 7 U. S. C. 211):

"Sec. 310. Whenever after full hearing upon a complaint made as provided in Section 309, or after full hearing under an order for investigation and hearing made by the Secretary on his own initiative, either in extension of any pending complaint or without any complaint whatever, the Secretary is of the opinion that any rate, charge, regulation, or practice of a stockyard owner or market agency, for or in connection with the furnishing of stockyard services, is or will be unjust, unreasonable, or discriminatory, the Secretary—

"(a) May determine and prescribe what will be the just and reasonable rate or charge, or rates or charges to be thereafter observed in such case, or the maximum or minimum, to be charged, and what regulation or practice is or will be just, reasonable, and non-discriminatory to be thereafter followed; * * *

"The allegations as to the failure to give a proper hearing are set forth in Paragraph IV of the bill of complaint, 1575 * * *. The allegations in substance are: That separate hearings were not accorded to the respective respondents (plaintiffs here). That at the conclusion of the taking of the testimony before an examiner, a request was made that the examiner prepare a tentative report, which should be subject to oral argument and exceptions, so that a hearing might be had before the Secretary without undue inconvenience to him, but that the request was denied and no tentative report was exhibited to plaintiffs and no oral argument upon the issues presented by the order of inquiry and the evidence was at any time had before the Secretary. That the Secretary, without warrant of law, delegated to acting secretaries the determination of issues with respect to the reasonableness of the rates involved. That when the oral arguments were presented after the original hearing,

and after the rehearing, the Secretary was neither sick, absent, nor otherwise disabled, but was at his office in the Department of Agriculture and the appointment of any other person as acting secretary was illegal. That the Secretary at the time he signed the order in question had not personally heard or read any of the evidence presented at any hearing in connection with the proceeding and had not heard or considered oral arguments relating thereto or briefs submitted on behalf of the plaintiffs, but that the sole information of the Secretary with respect to the proceeding was derived from consultation with employees in the Department of Agriculture out of the presence of the plaintiffs or any of their representatives.

"On motion of the government, the district court struck out all the allegations in Paragraph IV of the bill of complaint and the plaintiffs were thus denied opportunity to require an answer to these allegations or to prove the facts alleged.

* * * * *

"The outstanding allegation, which the district court struck out, is that the Secretary made the rate order without having heard or read any of the evidence, and without having heard the oral arguments or having read or considered the briefs which the plaintiffs submitted. That the only information which the Secretary had as to the proceeding was what he derived from consultation with employees of the Department.

1576 "The other allegations of the stricken paragraph do not go to the root of the matter. * * *"

1. The essence then of the assertion of failure of the Secretary of Agriculture to give to plaintiffs that full hearing to which they were entitled is that the order under review was made by the Secretary "without having heard or read any of the evidence and without having heard the oral arguments or having read or considered the briefs which the plaintiffs submitted." That "outstanding allegation" now has been denied. Evidence has been heard. Not only has it not been proved that the Secretary did not read any of the evidence nor hear the oral arguments, nor read and consider the briefs which plaintiffs submitted, but exactly the opposite has been proved. The Secretary did read parts of the transcript of the testimony; he did hear (not with his ears but by reading) the oral arguments, he did read and consider the briefs submitted by plaintiffs. These things have been proved unless indeed we shall reject the testimony of the Secretary of Agriculture as incredible. That alternative, absent a much stronger showing than is here, is not to be thought of in connection with the testimony of an honorable and distinguished head of a great executive department of the federal government.

The Supreme Court has not said that it was the duty of the Secretary of Agriculture to hear or read all the evidence and in addition thereto, to hear the oral arguments and to read and consider briefs. If the Supreme Court had said that it would have meant that the Packers and Stockyards Act cannot be administered. It is entirely impracticable to administer it if it imposes such a duty on the Secretary personally. Consider that in this very case the transcript of the oral testimony fills 13,000 pages. The Exhibits, several hundred, fill more than 1000 pages. A narrative statement of just a part of the oral testimony fills 500 printed pages. Learned counsel for plaintiffs assert indeed that they do not mean to contend that the Secretary personally must have read all of this mass of testimony. Such a contention could not be maintained. Let it be frankly stated now that the judges of this court, whose duty it was to consider the case de novo (since it involved constitutional issues), did not read all this testimony. We think, moreover, that it may be predicted
1577 with some assurance that all this testimony will not be used by the justices of the Supreme Court when, as they must, they consider the cases on the merits.

It is the testimony of the Secretary of Agriculture that he heard the oral argument (by reading it) and that he read the briefs. It is his testimony that he gave consideration to the findings of fact (they were 180 in number and filled more that 100 printed pages). It is his testimony that he examined to some extent even the voluminous transcript of the oral testimony and the exhibits. He had besides the benefit of a discussion of the oral testimony and exhibits by trusted assistants who had read every line and examined each exhibit. That full hearing which the law required did not demand that he should do more. Evidence taken by an examiner, as the evidence here was taken, "may be sifted and analyzing of the evidence by his subordinates." So the Supreme Court has said. How can it be said that the Secretary did not have the benefit of and did not consider the results of a sifting and analyzing of evidence by competent subordinates?

It cannot well be argued to this Court that the findings of fact which were studied by the Secretary do not represent a sifting and analyzing of the evidence by his subordinates. This court has found that those findings not only are supported by some evidence, but also that they are supported by the weight of the evidence. Upon its own independent consideration of the evidence this court arrived at the same findings as those which were reached by subordinates of and by the Secretary. The Secretary, however, had much more than the findings. Other subordinates who had read all the testimony and examined all ex-

hibits, discussed and reviewed the whole evidence with the Secretary.

The Supreme Court's meaning when it said that the evidence might be "sifted and analyzed by competent subordinates" for the Secretary is robbed of all practical significance and value when interpreted as by plaintiff's counsel, who say that evidence cannot be sifted and analyzed unless, as to any controverted issue, the testimony on both sides is set out either in full or in epitome. It seems to us that such an interpretation disregards, the true and natural meaning of the words "sifted" and "analyzed." The very purpose of "sifting and analyzing evidence is to extract from it the pure gold of truth'—the real and ultimate facts.

1578 If, however, testimony is not "sifted" and "analyzed" unless as to any controverted issue the testimony for and against a given conclusion is presented, are plaintiffs in a position to contend that the Secretary did not have the benefit of a summary of the testimony most favorable to plaintiffs? Did not plaintiffs incorporate a summary of the testimony in oral arguments and briefs? The Secretary read a transcript of the oral arguments and he read the briefs. If in them counsel omitted to epitomize the testimony most favorable to their contentions can they challenge the fullness of the hearing on that account? A defendant even in a criminal case scarcely would be heard to challenge either the fairness or fullness of the hearing accorded him, let us say on a motion for a new trial, if he did not so much as direct the attention of the court to the evidence in his favor.

Findings of Fact

As to the issue made by the answer to Paragraph IV of the bill and upon the evidence heard we make the following findings of fact: We find that the Secretary of Agriculture caused to be sent to his private office for his use and consideration in connection with the performance of his function the full transcript of all the testimony taken in the proceeding, together with the exhibits; that he was advised by the Solicitor of the Department of Agriculture* that his duty was a personal one and that the order must be his order based on his consideration of the record; that the Secretary personally read and considered a transcript of the whole of the oral argument before the Assistant Secretary and the briefs of the parties (in which oral arguments and briefs were such summaries of the evidence as the parties desired

*Hon. Seth Thomas, now United States Circuit Judge in the Eighth Circuit, was then Solicitor of the department. His testimony especially is significant.

to incorporate therein); that, in addition to his study of oral arguments and briefs, the Secretary studied and considered findings made by competent subordinates in the Department of Agriculture resulting from a sifting and analyzing of all the evidence and that, further, he considered an oral review and discussion of all the evidence by other competent subordinates who per-
1579 sonally had read every line of testimony and inspected each exhibit, and that he supplemented all of the foregoing by himself and considering parts of the transcript of the oral testimony.

Conclusion of Law

Based upon the findings of fact we conclude as a matter of law that the Secretary gave plaintiffs that hearing to which the law entitled them.

2. Obviously the only "further proceedings" in this court contemplated by the Supreme Court were such as would be necessary to determine the issue newly to be made following the handing down of the opinion of the Supreme Court. If, however, as is contended by learned counsel for plaintiffs, the cause really has been remanded, not for "further proceedings" to "determine whether plaintiffs had a proper hearing" but for a rehearing, then, as to all issues, there has been accorded such a rehearing. We have reached the same conclusions on the merits as to the facts and law as those heretofore announced and we incorporate them herein by reference.

3. Exceptions are allowed to the conclusion of law newly stated here and also to those herein incorporated by reference.

Counsel for defendants will submit for approval and entry an appropriate form of decree dismissing the bills.

In United States District Court

Dissenting opinion

Filed July 2, 1937

VAN VALKENBURGH, Circuit Judge, dissenting:

I am unable to conclude from the testimony at this rehearing that the Secretary of Agriculture gave to the determination of this matter the personal consideration which is his duty under the provisions of the Packers and Stockyards Act as construed by the Supreme Court. It is not an impersonal obligation. The proceeding has a quality resembling that of a judicial proceeding, in which the one who decides shall be bound to reach his conclusion "uninfluenced by extraneous considerations which in other

fields might have play in determining purely executive
1580 action". The proceeding is not one of ordinary administration, but looks to legislative action, in which the Secretary is the agent of Congress in the fixing of rates for market agencies. So that, as said by the Supreme Court, the authority conferred by the Act is not given to the Department of Agriculture, as a department in the administrative sense, but to the Secretary himself as the legislative agent of the Congress. That duty "undoubtedly may be an onerous one, but the performance of it in a substantial manner in inseparable from the exercise of the important authority conferred". Morgan vs. United States, 298 U. S. 468, 482.

There can be no doubt that, at the time of original trial in this court, it was the theory of the government, as expressed by its counsel, that the authority conferred by paragraph 310 of the Packers and Stockyards Act is given to the Department of Agriculture as a department in the administrative sense. This is apparent from the language of the motion to strike paragraph IV, among other parts of complainants' bill, "for the reason that the allegations contained in said portions of said petition are impertinent, redundant, incompetent, irrelevant, and immaterial to any issue which may properly be raised in this suit." This position was maintained on appeal before the Supreme Court, as appears from the argument of appellees reported in 298 U. S. at pages 469, 471. Counsel expressly referred to the language of this court to the effect "that the theory of these allegations is supported by nothing in the Act and that a construction of the Act inconsistent with that theory would destroy it altogether as a measure capable of practical administration." Counsel added in that presentation that to permit parties affected by "administrative decisions" thus to challenge orders, as signed upon insufficient deliberation, "might well lead to the paralysis of *administrative* tribunals." (Italics supplied.) Obviously no distinction was made between departmental proceedings in an administrative sense, and those of a quasi judicial character.

It is impossible, in my judgment, to read the testimony of the Secretary without recognizing that he carried into the final determination reached this conception of the proceeding as one belonging to his department in an administrative sense. The examinations he made were casual and perfunctory in the extreme. He says his final determination represented his
1581 reactions to the findings of the men in the Bureau of Animal Industry. He accepted these findings because he regarded his subordinates as in a better position than himself to make the decision. In his view "the phrase 'Secretary of Agri-

culture' is perhaps used in connections with regard to laws of this sort in the broad sense as well as in the narrow sense."

While undoubtedly the Secretary may have such assistants to analyze and appraise evidence for his convenience and advice, this does not and should not mean that such appraisal may amount to final valuation, where the responsibility of decision is expressly addressed to the Secretary alone, sitting in a quasi judicial capacity. And this means a moral as well as a legal responsibility, where large interests, as here, are critically affected.

The findings accepted by the Secretary emphasize the importance and necessity of this market. If it is to be maintained, those who conduct it must receive a fair and reasonable return upon their services. This is true apart from a consideration of the question of confiscation as such. For this reason the conscientious judgment of the Secretary himself apart from his administrative character is demanded as a duty.

Of course the Secretary takes official responsibility when he signs any administrative order prepared by his department, but that is not the quality of responsibility demanded in a proceeding of this nature.

If it be true, as contended, that the Act cannot be administered except upon the superficial basis here disclosed, then legislation should be made to meet that situation. Necessarily I have made but brief reference to record contents in stating these conclusions. In my judgment the recitals of the Secretary as a whole confirm those views.

Being of opinion that the proceedings in this case differed in no substantial respect from those ordinarily involved in departmental administration, and that a serious condition in the life of this market has resulted from the purely casual and mechanical treatment it has received, I must respectfully dissent from the views expressed by my associates.

[File endorsement omitted.]

1582 In United States District Court

Opinion of the Court

Filed June 18, 1938

Before VAN VALKENBURGH, Circuit Judge, and REEVES and OTIS, District Judges

PER CURIAM: The matters for decision are the motion of the defendants for an order staying the distribution of impounded moneys and the motion of petitioners for their distribution. These matters arise in the manner now to be stated.

Under date of June 14, 1933, the Secretary of Agriculture issued an order fixing maximum rates and charges for stockyard services rendered by petitioners at the Kansas City Stockyards in Kansas City, Missouri. By bills filed July 19, 1933, petitioners sought injunctive relief against enforcement of that order. This Court (July 22, 1933) temporarily restrained its enforcement upon the following conditions imposed in each of the companion cases—"that the petitioner shall deposit with the Clerk of this Court on Monday of each and every week hereafter while this order, or any extension thereof, may remain in force and effect and pending final disposition of this cause, the full amount by which the charges collected under the Schedule of Rates in effect exceeds the amount which would have been collected under the rates prescribed in the Order of the Secretary, together with a verified statement of the names and addresses of all persons upon whose behalf such amounts are collected by petitioner."

By agreement of counsel the temporary restraining orders, so conditioned, were continued in effect pending final hearing. Decrees dismissing the bills were entered December 20, 1934. (See this case, 8 F. Supp. 766.) Petitioners appealed. The Supreme Court on May 25, 1936, reversed the decrees and remanded the cases for a determination of the question whether the Secretary had accorded petitioners "a full hearing" as required by law. 298 U. S. 468. After the remand and a presentation anew of all issues, this court held that petitioners had been accorded
1583 the hearing required by law and again entered decrees dismissing the bills (July 9, 1937). Petitioners again appealed. The Supreme Court on April 25, 1938 (— U. S. —) reversed outright the decrees of this Court, on the ground that the Secretary had not accorded the petitioners the "full hearing" required by law. On May 31, 1938, a petition for rehearing was denied and the cases remanded for further proceedings in accordance with the opinion of the Supreme Court. Pursuant to the mandate of the Supreme Court this Court now has entered its final decrees setting aside the decrees of July 9, 1937, and permanently enjoining the enforcement of the Secretary's order of June 14, 1933.

The Clerk of this Court has in his custody sums aggregating $586,093.32 paid to him by petitioners in accordance with the condition upon which restraining orders were issued, as above set out. Petitioners ask that the sums so deposited be returned to them. Defendants move that the distribution of the moneys be stayed until the termination of such litigation, if any, as shall follow an order the Secretary may make hereafter, after he has accorded petitioners such a hearing as is required by law (which he now offers to do), in which order he will prescribe the maximum

rates and charges for stockyard services rendered by petitioners, the order to be retroactively effective as of and from June 14, 1933.

1. We consider that the motion of defendants has not the faintest shadow of merit. The Supreme Court twice has said that the order of June 14, 1933, was invalid. Pursuant to the mandate of the Supreme Court this court permanently has enjoined enforcement of that order and has dissolved the restraining orders heretofore issued. The fund in the Clerk's custody belongs to petitioners. It was deposited by them as security that if the Secretary's order of June 14, 1933, should be held valid those from whom excess charges had been collected would be reimbursed. The fund was deposited upon the clear understanding that if the
1584 order should be held invalid and its enforcement enjoined the fund would be returned to petitioners. The orders under which the fund was accumulated are susceptible of no other interpretation.

If this Court did not now order the return to the petitioners of the moneys deposited by them the Court itself would be guilty of bad faith. The petitioners deposited the moneys on the understanding and assurance that the fund so created would be returned if the Secretary's order were held invalid. The order has been held invalid and its enforcement enjoined.

2. We do not consider that the Secretary's contention that he now can make an order prescribing rates and charges which shall be effective as of June 14, 1933, and which shall supersede rates and charges, lawfully in effect then and thereafter, has any shred of reason or law to support it. It is directly opposed to the very words of the Act authorizing the Secretary to prescribe rates and charges. The language of the Act is that the rates and charges the Secretary is authorized to prescribe shall be determined and prescribed "after full hearing" (and there has been no such hearing), and that when they have been so determined and prescribed they shall "be thereafter observed."

Defendants' Motion for an Order Staying Distribution of Impounded Moneys is overruled. It is so ordered. An exception is allowed to defendants.

The motion (styled petition) of petitioners (styled plaintiffs) for an Order of Distribution is sustained in an order filed contemporaneously herewith. To that order defendants are allowed an exception.

ARBA S. VAN VALKENBURGH,
United States Circuit Judge.
ALBERT L. REEVES,
United States District Judge.
MERRILL E. OTIS,
United States District Judge.

[File endorsement omitted.]

1585 In United States District Court

Opinion of the Court

Filed April 9, 1940

Before VAN VALKENBURGH, Circuit Judge, and REEVES and OTIS, District Judges

VAN VALKENBURGH, Circuit Judge: This is the third time this case has come before this court, and a better understanding of ths issues now presented requires a recapitulation of the successive steps of the litigation in this court and in the Supreme Court of the United States.

The proceeding was instituted by an order of the Secretary of Agriculture in April 1930. An order presenting rates followed in May 1932. Upon rehearing, granted in July 1932, a new order was made on June 14, 1933. The order of June 14, 1933, was attacked in this court, so far as it prescribed maximum charges for selling livestock, as illegal, arbitrary, and as depriving the plaintiff commission men of their property without due process of law.

The outstanding allegation in the bill in support of the contention that the order was null and void because plaintiffs had been denied a fair and full hearing, was the charge set forth in paragraph IV that the Secretary had delegated to assistants, purporting to be acting Secretaries of Agriculture, powers and authorities vested by the Packers and Stockyards Act solely in the Secretary. That the hearings, such as were granted, were held before such subordinates, who made the findings and conclusions incorporated in said order. That the secretary himself signed the order, but that his sole information with respect to the proceeding was derived from consultation with employees for the Department of Agriculture, largely out of the presence of plaintiffs or their representatives.

Counsel for the secretary moved to strike the paragraph from the bills on the ground that this was a purely departmental administrative proceeding, and this court improvidently
1586 indulged that contention and sustained the motion to strike. Subsequently under misconception of the limitations imposed upon the review of such proceedings, the order was sustained and the bills of complaint were dismissed.

On appeal to the Supreme Court the decree of this court was reversed and some very pertinent and instructive rulings were made with respect to proceedings under the Packers and Stock-

yards Act. Morgan vs. United States et al., 298 U. S. 468. It was there held that there is—

"No basis for the contention that the authority conferred by Paragraph 310 of the Packers and Stockyards Act is given to the Department of Agriculture as a department in the administrative sense."

"The proceeding is not one of ordinary administration, conformable to the standards governing duties of a purely executive character. It is a proceeding looking to legislative action in the fixing of rates of market agencies."

"A proceeding of this sort, requiring the taking and weighing of evidence, determinations of fact, based upon the consideration of the evidence, and the making of an order supported by such findings, has a quality resembling that of a judicial proceeding."

"To give the substance of a hearing which is for the purpose of making determinations upon evidence, the officer who makes the determinations must consider and appraise the evidence which justifies them. That duty undoubtedly may be an onerous one, but the performance of it in a substantial manner is inseparable from the exercise of the important authority conferred."

"Facts and circumstances must not be considered which should not legally influence the conclusions."

"In determining whether in conducting an administrative proceeding of this sort the Secretary has complied with the statutory prerequisites, the recitals of his procedure cannot be regarded as conclusive. Otherwise the statutory conditions could be set at naught by mere assertion. If upon the facts alleged, the 'full hearing' required by the statute was not given, plaintiffs were entitled to prove the facts and have the Secretary's order set aside."

The conclusion was that the district court erred in striking out the allegations of Paragraph IV of the bills of complaint.
1587 The decree was reversed and the cause remanded with directions that the defendants therein should be required to answer the allegations contained in that paragraph, and that the question whether plaintiffs had had a proper hearing should be determined.

At the next hearing before this court, constituted as at present, the majority reached the conclusion that the secretary gave plaintiffs that hearing to which the law entitled them, and entered a decree dismissing the bills. Morgan vs. United States, 23 Fed. Supp. 380. The writer was unable to concur in that conclusion and the reason for dissent was epitomized in the following language:

"It is impossible, in my judgment, to read the testimony of the Secretary without recognizing that he carried into the final determination reached this conception of the proceeding as one belonging to his department in an administrative sense. The examiantions he made were casual and perfunctory in the extreme. He says his final determination represented his reactions to the findings of the men in the Bureau of Animal Industry. He accepted these findings because he regarded his subordinates as in a better position than himself to make the decision. In his view the phrase 'Secretary of Agriculture' is perhaps used in connections with regard to laws of this sort in the broad sense as well as in the narrow sense."

On appeal to the Supreme Court the decree was again reversed and the order of the Secretary held void for failure to allow the full hearing before the Secretary required by the Packers and Stockyards Act.

The Secretary of Agriculture at the outset was firmly of the opinion that the authority conferred by paragraph 310 of that Act is given to the Department of Agriculture as a department in the administrative sense. Despite the holding of the Supreme Court in the first Morgan case that there is no basis for this contention (298 U. S. 1. c. 481), he in effect still adhered to this view, as witness his deposition taken in the former hearing, in which, having been referred to as the "rate maker" under the terms of the Act, he said:

1588 "Yes; that is correct. I would think, however, that the phrase 'Secretary of Agriculture' is perhaps used in connection with regard to laws of this sort in the broad sense as well as the narrow sense."

In the second Morgan opinion, 304 U. S. 1, c. 18, the court said:

"The substance of his action is stated in his answer to the question whether the order represented his independent conclusion as follows:

"'My answer to the question would be that that very definitely was my independent conclusion as based on the findings of the men in the Bureau of Animal Industry. I would say, I will try to put it as accurately as possible, that it represented my own independent reactions to the findings of the men in the Bureau of Animal Industry.'

"Save for certain rate alterations, he 'accepted the findings.'"

The following language of that opinion, 304 U. S. 1, c. 20–21, has especial pertinency to the inquiry now before us:

"The requirements of fairness are not exhausted in the taking or consideration of evidence but extend to the concluding parts

of the procedure as well as to the beginning and intermediate steps.

"The answer that the proceeding before the Secretary was not of an adversary character, as it was not upon complaint but was initiated as a general inquiry, is futile. It has regard to the mere form of the proceeding and ignores realities. In all substantial respects, the government acting through the Bureau of Animal Industry of the Department was prosecuting the proceeding against the owners of the market agencies. The proceeding had all the essential elements of contested litigation, with the government and its counsel on the one side and the appellants and their counsel on the other. It is idle to say that this was not a proceeding in reality against the appellants when the very existence of their agencies was put in jeopardy. Upon the rates for their services the owners depended for their livelihood, and the proceeding attacked them at a vital spot. This is well shown by the fact that, on the merits, appellants are here contending that under the Secretary's order many of these agencies, although not found to be inefficient or wasteful, will be left with deficits instead of reasonable compensation for their services and will be compelled to go out of business. And to this the government responds that if as a result of the prescribed rates some agencies may be unable to continue, because through existing competition
1589 there are too many, that fact will not invalidate the Order.

While we are not now dealing with the merits, the breadth of the Secretary's discretion under our rulings applicable to such a proceeding (Tagg Bros. & Moorhead vs. United States, 280 U. S. 420; Acker vs. United States, 298 U. S. 426) places in a strong light the necessity of maintaining the essentials of a full and fair hearing, with the right of the appellants to have a reasonable opportunity to know the claims advanced against them as shown by the findings proposed by the Bureau of Animal Industry."

The holding was that, as the hearing was fatally defective, the order of the Secretary was invalid. An effort to establish a case for rehearing was rejected, and the case was remanded to the district court for further proceedings in conformity with the opinion rendered.

On July 22, 1933, as a condition of the interlocutory stay order granted to petitioners in their attack upon the validity of the Secretary's rate order of June 14, 1933, this court ordered the payment into court by petitioners of the difference between the rates established by tariffs of petitioners published prior to June 14, 1933, and the lower rates fixed by the Secretary's order of the latter date. This deposit was conditioned to await the outcome of the litigation then pending. These deposits made with the clerk of the District Court between July 22, 1933, and November

1, 1937, aggregated the sum of $586,093.32. On this last-named date new advanced rate schedules for petitioners became effective by consent. United States vs. Morgan et al., 304 U. S. 1, was finally decided May 31, 1938, and on June 7, 1938, defendants filed in this court a motion for an order staying the distribution of these monies, alleging that the Secretary had reopened the proceeding in which the invalid order of June 14, 1933, was entered; that the Secretary would determine by an order, as of June 14, 1933, what rates may reasonably be charged by petitioners to their clients for services rendered, thereby assuring that said monies would be disposed of with equity and law. June 11, 1938, petitioners filed answer to this motion and a petition for restitution to them of the impounded funds. July 2, 1938, this court
1590 overruled defendants' motion and sustained petitioners' application for restitution. On appeal, the Supreme Court reversed the latter order of this court, holding that, in arresting excess payments under schedule rates this court acted as a court of equity, "charged both with the responsibility of protecting the fund and of disposing of it according to law, and free, in the discharge of that duty, to use broad discretion in the exercise of its powers in such manner as to avoid an unjust or unlawful result." United States vs. Morgan, 307 U. S. 183.

In the reopened proceeding the Secretary, upon June 20, 1939, has entered a new order holding that the rates and charges collected during the period between July 22, 1933, and November 1, 1937, were unjust and unreasonable and prescribing, as just and reasonable, the identical rates prescribed in the invalid order of June 14, 1933. A motion of respondents prays the court to require petitioners to show cause, if any, why such order does not constitute an appropriate basis for the distribution of said funds now in the registry of this court. In response to this motion petitioners filed a return praying that the motion of respondents herein be denied and that the moneys deposited in the registry of the court be distributed to petitioners. In support of this prayer many specifications of error and irregularity are assigned.

The first, and perhaps the foremost of these, is the charge that the market agencies were denied the fair hearing required by the due process clause and were denied an impartial tribunal as the trier of the facts. The Secretary overruled petitioners' motion and affidavit of bias and prejudice filed August 12, 1938, and their motion to suppress the Report and Recommendations of the trial examiner filed February 17, 1939.

An examination of the opinion of the Supreme Court in previous appeals discloses that the June 14, 1933, order of the Secretary had been held invalid because a full and fair hearing
1591 had not been accorded to petitioners, because the Secretary had not addressed himself to the evidence and upon that

evidence had conscientiously reached the conclusions deemed to justify them, but, on the contrary, had accepted, and adopted as his own, findings made by subordinates in the Bureau of Animal Industry who were the real prosecutors of these proceedings against the owners of these market agencies—proceedings in which "the very existence of their agencies were put in jeopardy." In support of their charge of bias and prejudice, which, in this case, consists of an alleged preconceived conviction, concerning the issue involved, petitioners put in evidence a letter of the Secretary to the New York Times in regard to this impounded fund. This letter was sent on May 8, 1938, which was between the date of the Supreme Court's decree, invalidating his order, and the handing down of its opinion denying a rehearing. In this letter the Secretary displays impatient disapproval of the Supreme Court's action, and, in effect, brings an appeal from it to the bar of public opinion. He insists, despite that ruling, that this impounded fund (which he mistakenly places at $700,000) rightfully belongs to the farmers, of which, he says, they had been deprived "by some finely drawn rules of judicial procedure." The letter emphasizes his fixed opinion that this money should be distributed to the shippers of livestock, notwithstanding he interpreted the Supreme Court's decree to the contrary. By this letter he publicly announced his determination and prejudgment of what the result of any future proceeding should be. His reopening order was dated June 2, 1938, and, as the first step in the proceeding, he presented the former invalidated proceedings, findings of fact, conclusions, and order as tentative findings. He permitted the filing of exceptions thereto, and designated the same examiner to hear additional evidence. Thereafter the Secretary himself heard oral argument in March 1939. By the government no additional evidence was introduced. It is clear, from the record pre-
1592 sented to this court, that the object of the Secretary, through this reopened hearing, was to procure the validation, nunc pro tunc of the fatally defective order of June 14, 1933. His conception was that the only error found by the Supreme Court in the prior proceeding which led to the invalidation of that order was the failure to permit a full argument on these findings and conclusions with full understanding of the issues presented.

These findings, however, had been made by representatives of the Bureau of Animal Industry, who had been found to be active prosecutors for the government in this contested litigation, and had been made upon evidence to which the secretary had not addressed himself in the sense contemplated by the Act.

Moreover, the rates and charges prescribed in the invalidated order were rates prescribed for future observance, and were not based upon actual experience.

By the terms of Section 310 of the Act it is provided that the secretary may, after full and fair hearing, determine and prescribe what will be the just and reasonable rates or charges to be thereafter observed. In other words, such an order is necessarily a forecast and is to be judged solely by the conditions existing. That order has been declared invalid, and neither it nor the findings, made or purported to have been made as a result of the discredited proceedings, are entitled to weight in the inquiry now before use. This is a proceeding in equity to determine to whom the impounded fund should be distributed, and the decision depends upon a determination of the reasonableness of those rates in the light of actual experience instead of prophecy. The invalidated order and the so-called findings upon which it was based have no standing as proper bases of this inquiry. The secretary upon reopening the case assumed the burden of determining that the money would be disposed of "in accordance with equity and law." He introduced no new evidence in support of this burden, but contented himself with dependence upon the previous invalid order and findings as a basis. He
1593 was apparently of opinion that a perfunctory argument on this basis would rehabilitate the rates prescribed as of June 14, 1933.

We have before us, as had the secretary, not only proof that the rates prescribed June 14, 1933, were not reasonable, but also that at the time of this reopened hearing "it is now possible as it has never been before, to determine just and reasonable rates and to prove them to be such beyond question." This information is gathered from a "Memorandum for the Secretary" presented to him on June 13, 1939 (just one week before the order of June 20, 1939), by C. A. Kitchen, Associate Chief of the Bureau of Animal Industry. This memorandum, while too lengthy for incorporation in this writing, contains matter of crucial importance, and is of itself sufficient to condemn the order under consideration as a basis in equity for the distribution of the impounded fund.

We refer only briefly to some of the important statements. He recites that he has read the proposed order in Docket 311, and certain questions have occurred to him which he submits to the Secretary for consideration. A first observation is that "the proposed order does not modify the rates set out in your order of June 14, 1933," although "the structure of the rates in your

order of June 14, 1933, and in the proposed order may be open to criticism in certain particulars."

He especially thinks the rate for so-called yearling cattle should be brought to the attention of the secretary. He states in this connection that the reduction made by the order of June 14, 1933, was most pronounced in the rates applying to yearling cattle, and that this appears to be the vulnerable point in that, and this, rate structure. Cattle of the class defined in the order as yearling cattle make up, as he says, a large proportion of the cattle received in the Kansas City market. He suggests that the conditions which prompted the modification order of November 1, 1937, did not suddenly come into being on that date, but it was reasonable to assume that they had obtained for sometime
1594 prior thereto, and the charges made in the cattle tariff are prima facie recognition of the fact that the rates of June 14, 1933, which are confirmed by the proposed order, were not reasonable for the entire period during which the funds were impounded. He clearly suggests that the severe reduction in the rates for yearling cattle in this and the order of June 14, 1933, especially is without justification, and forecasts that "the Department may be subject to criticism for having acted in an arbitrary manner." Of great significance is the statement that "it is now possible, as it has never been before, to determine just and reasonable rates and to prove them to be such beyond question"; that, "in effect such a determination must have been made as a basis for the modification of November 1, 1937."

The Secretary testifies (record 98) that he read this memorandum. He made no changes in his findings and did not act in any way in reliance upon this memorandum in connection with this proceeding. This attitude accords with the treatment received by petitioners who, both at the original hearing, and in this later one, consistently urged virtually the same matters upon the Secretary and Examiner, but without success. The order as made ignored the pertinent suggestions of Mr. Kitchen, who at this time has taken over the administration of the Packers and Stockyards Act which formerly was in the Bureau of Animal Industry.

In our judgment the Kitchen memorandum, ignored by the Secretary, as he says, standing alone, but certainly in connection with the offers of proof by petitioners, proves conclusively that no effort was made to ascertain the actual reasonableness of rates during the impounding period, although it was then possible to determine them from actual experience instead of from hypothesis and forecast. On the contrary it confirms the fact that the object of the Secretary, and of those in the department by whom these rates were originated, was to validate the

rates prescribed by the invalid order of June 14, 1933. In
1595 our judgment also it establishes the fact that by reason of a preconceived and fixed erroneous conception of the authority conferred upon him by the Packers and Stockyards Act, the Secretary denied to petitioners the fair hearing required by the due process clause before an impartial tribunal as the trier of the fact.

We are to remember that in the discharge of our duties and responsibilities as a Court of Equity, we are enjoined to use broad discretion in the exercise of equitable powers in such manner as to avoid an unjust or unlawful result.

The Secretary seems to regard the permission to obtain the aid of assistants in the department, who may "sift and analyze" evidence taken by an examiner, to confer upon him the right without more to accept and adopt the views of such subordinates, who are, in most cases, as in this, the actual prosecutors against the market agencies. There must, however, be a hearing in a substantial sense. Sifting and analyzing by others is not enough.

"To give the substance of a hearing, which is for the purpose of making determinations upon evidence, the officer who makes the determinations must consider and appraise the evidence which justifies them."

This, the Secretary did not do, as appears from his testimony here. The following statement is typical of the manner in which he examined and appraised the testimony tendered by petitioners in support of their proposed findings and their exceptions to the Master's report:

"It is my recollection that Mr. Brooke's (the examiner) conclusion in hearing Mr. Bates' testimony was not such that he felt his testimony had any—that great validity should be attached to his testimony. I accepted Mr. Brooke's judgment in that respect."

So it was generally that Mr. Brooke, not the Secretary, appraised the testimony offered. The judgment in the second Morgan appeal was based upon the fact that a fair hearing was denied both because proper argument was denied, and because evidence had not been properly appraised. At this final
1596 hearing the correction claimed was perfunctory merely and unsubstantial. Before the examiner facts and circumstances relevant to the hearing were excluded from consideration and no relief was obtained by exceptions taken before the Secretary. The rulings of the examiner were arbitrary in many cases, and were uniformly sustained upon exceptions to the Master's report. In one case the chief accountant for the

Packers and Stockyards Division of the Department of Agriculture was asked whether he assisted in the preparation of the order in the Kansas City proceeding. The object, of course, was to show by whom in fact the findings and order were formulated, it having already been held that they were not framed in any legal sense by the Secretary himself. Counsel for the government interposed "objection to this particular question and all other questions of the same tenor for the reason that the Secretary's order speaks for itself" and therefore that such questions "are not germane to any issue in this proceeding." But in the first Morgan case (298 U. S. 468), the Supreme Court expressly held that "the Secretary's recitals of his procedure in such cases are not conclusive on the question whether the statutory requirements were obeyed."

It is to be remembered that findings and order are challenged on the ground, among others, that petitioners did not have a full and fair hearing before an unbiased tribunal, with evidence duly appraised and considered by the statutory trier of the facts. In such case the reports and testimony of subordinates are not privileged. We have here no communications affecting the interest of government in its sovereign capacity, but rather the question of whether petitioners are to be deprived of their livelihood, as the Supreme Court opinion says, by a proceeding which lacks the essential features of due process.

The burden exists of establishing not only a reasonable schedule of rates, but the equitable disposition of the impounded fund. In fact the latter was the real object of the reopened
1597 proceeding. This burden rests primarily upon the Secretary. This can no longer be regarded strictly as a proceeding under the Packers and Stockyards Act, which provides that after full investigation and hearing the Secretary "may determine and prescribe what will be the just and reasonable rate or charge, or rates or charges, to be thereafter observed in such case * * * and what regulation or practice is or will be thereafter followed" (Sec. 310 (a) 42 Stat. 159, 166). To this end, in an original proceeding, a reasonable forecast, based upon dependable existing and established facts, may be indulged. In the present case, however, the Secretary is not prescribing for the future. Whatever order may result is not to be applied to future transactions.

The object to be aimed at should be, as stated by the Secretary in his reopening order, "to assure that moneys will be disposed of with equity and law," to be effected by a court of equity free in the discharge of its duty "to use broad discretion in the exercise of its powers in such manner as to avoid an unjust or unlawful result." The question then to be determined is to whom

should this impounded money be distributed, and the answer to that question depends upon the reasonableness of the rates charged for the impounding period—not hypothetical rates alone, but actual rates in so far as such can be determined. We are now dealing with a past stage of livestock commission transactions; and we are told by the Chief of the Packers and Stockyards Administration, formerly associate Chief of the Bureau of Animal Industry, that just one week prior to the issuance of this order it was then possible "as it has never been before, to determine just and reasonable rates and to prove them to be such beyond question." He concedes that any modification of the June 14, 1933, order might be heralded as an admission of error on the part of the Department. At any rate the Secretary refused to avail himself of this data, and reaffirmed the exact rates purporting to have been established by the invalidated order of June
1598 14, 1933, although warned by his said subordinates that there was a vulnerable point in that rate structure which might expose the proposed order to criticism.

As stated by government counsel, the Secretary, instead of availing himself of the data available for determining actually reasonable rates, chose rather to act upon the old hypothetical record, casting upon petitioners the burden of producing evidence, lodged in the records of the department, and tendered to the Secretary for use before the order complained of was issued. Throughout this reopened proceeding the Secretary relied upon the appraisal of evidence by his subordinates. That was true at the former hearing, and the resulting order was held to be invalid, largely on that ground. Nothing was added to the old record by the government, and the same rulings were made although the attention of the Secretary was critically called to errors in the rate structure.

An examination of this entire record, including the testimony of the Secretary at the hearing, and the exhibits offered, convinces that the reopened proceeding, no more than that resulting in the invalid order of June 14, 1933, satisfies the requirements of due process in the administration of this section of the Packers and Stockyards Act. No attempt was made to ascertain the reasonable rates applicable to the business of the impounding period from the standpoint of available actual experience, but, on the contrary, the sole object was the patent purpose to validate the rates prescribed by the invalid order of June 14, 1933, in accordance with a preconceived construction of the Packers and Stockyards Act.

The rates in existence prior to the order of June 14, 1933, were the legal rates until found to be unreasonable by valid order. I think that not only should the present order be invalidated, but

also that this prolonged litigation should be ended by restitution to the market agencies of the impounded monies which resulted from commissions earned under the provisions of rates then in force, and not since effectively challenged. The oppor-
1599 tunity to determine the reasonableness of these rates "beyond question" was tendered by the Associate Chief of the Bureau of Animal Industry himself, but the offer was ignored as in conflict with the obvious purpose of avoiding what "might be widely heralded as an admission or error on the part of the Department," in prescribing the rates improvidently forecast by the invalid order of June 14, 1933.

The records of the Clerk of this court show approximately 1,870,000 separate items of the impounded funds, arising out of a multitude of transactions, with a correspondingly large number of shippers. The amount of such deposits are of comparatively small significance to the shippers, while to the petitioners they involved the very existence of their market agencies.

A decree will be entered in conformity with these conclusions.

Counsel may with due expedition submit for the consideration of the court such findings and conclusions as they may deem appropriate.

[File endorsement omitted.]

1600 In United States District Court

Concurring opinion of Judge Reeves

Filed April 9, 1940

Before VAN VALKENBURGH, Circuit Judge, REEVES and OTIS, District Judges

I concur in the very clear and able opinion of Judge Van Valkenburgh, presiding judge, but in doing so desire to express the following:

At the first trial of these cases this court erred in striking out an averment in the several petitions to the effect that the Secretary of Agriculture had not personally considered and promulgated what he regarded as his reasonable commission rates. We sustained the rates prescribed by the Secretary of Agriculture. The Supreme Court reversed the cases, Morgan vs. United States, 298 U. S. 468.

Upon a second trial, after the averments were restored, we again found that there was substantial testimony to support the reasonableness of the rates prescribed by the Secretary. However, on the second appeal, the Supreme Court found that the Secretary

had not granted the full hearing contemplated by the Packers and Stockyards Act and held invalid the challenged order of the Secretary made June 14, 1933. We had previously enjoined the enforcement of the order until the question of its validity could be determined on its merits.

When the case was reversed the last time (Morgan v. United States, 304 U. S. 1) this court ordered distribution of the funds impounded by a previous order to the several marketing agents who are plaintiffs. An appeal was taken from this order, and the Supreme Court again reversed our order (United States v. Morgan, 307 U. S. 183.)

In this last decision the court held that before distribution should be made it was within the right and proper function of the Secretary of Agriculture to investigate, and, (p. 190) "if the
1601 Secretary shall determine that the rates exacted by aid of the court, and paid into its registry are excessive," then (p. 198) "his determination, if supported by evidence and made in a proceeding conducted in conformity with the statute and due process, will afford the appropriate basis for action in the district court in making distribution of the fund in its custody."

The decision of the court was handed down on May 15, 1939. Immediately thereafter the Secretary of Agriculture reopened the case for further hearing, and among other things ordered as follows:

"It is also ordered that the 'Proceedings, Findings of Fact, Conclusion and order,' as issued by the Secretary of Agriculture on June 14, 1933, be served upon said market agencies as the tentative findings of fact, conclusion and order of the Secretary of Agriculture in this proceeding; and

"It is further ordered that said market agencies be and they are hereby given thirty (30) days from the date of service hereof within which to file exceptions to said tentative findings of fact, conclusion and order, in accordance with the rules of practice adopted by the Secretary of Agriculture, governing the procedure in such cases, and within which to make any appropriate motions or objections with respect to further proceedings in this case."

Pursuant to this order the case was "reopened" and additional testimony submitted by petitioners, not by the government.

The opinion of the Supreme Court, reported 304 U. S. 1, was rendered April 25, 1938. It was in that opinion the court held that the Secretary of Agriculture had not given full and fair hearing as required by the law.

On May 8, 1938, a letter from the Secretary appeared on the editorial page of the New York Times wherein he used the following language:

"Actually [referring to the opinion of the Supreme Court], the effect is to give to the Kansas City commission men and their

attorneys $700,000 of impounded money which rightfully belongs to the farmers."

In this hearing or trial, counsel for the petitioners have again raised sundry questions. It is contended by them that the
1602 Secretary failed to find the rates in force unreasonable as of the date he prescribed his rates, and that the rates so "prescribed" are themselves not reasonable and not supported by the testimony in the case. Moreover, it is contended that the Secretary again failed to give the full hearing contemplated by law and that he did not exercise a judicial disinter'edness, but, on the contrary, was clearly biased and therefore disqualified to hear the case. These will be briefly considered:

1. One of the contentions made by the petitioners is that the rates prescribed were identical with those found invalid by the Supreme Court and that same were based upon opinion evidence and on evidence in the nature of a forecast predicated upon prior experience over a period of years immediately preceding the said order of June 14, 1933.

Since the period covered by the order had elapsed it is the contention of the petitioners that the actual experience of the companies was not only available, but easily ascertainable by the Secretary, and that, if such experience had been carefully studied, it would have revealed the utter inadequacy of the rates prescribed by the Secretary and the reasonableness of the rates in force.

It appeared from the evidence that the Secretary relied upon the same evidence presented to him at the original hearing and that he made but scant reference to the actual experience of the company during the period the excess commission rates were impounded.

Mr. Justice Cardoso, in West Ohio Gas Co. v. Public Utilities Commission of Ohio, 294 U. S. 63, loc. cit. 82, expressed the proper rule by saying that a prophesy should not be given first place over actual experience:

"A forecast gives us one rate. A survey gives another. To prefer the forecast to the survey is an arbitrary judgment."

In this case it was undoubtedly the duty of the Secre-
1603 tary to disregard the opinion evidence and forecasts which formed the basis for his original order and to adhere completely and entirely to the evidence which revealed the actual experience of the market agencies during the time the excess commissions were collected and impounded. So far as the market agencies were concerned, the income used by them was precisely that prescribed by the Secretary. The practical effect of such

rates in their business operations would have disclosed their reasonableness or the opposite.

Furthermore, according to the undisputed testimony, as well as facts admitted by the government, radical changes in business operations due to extrinsic factors were effected immediately following the promulgation of the rates of June 14, 1933. Prior to that time marketing agencies had received livestock largely by carload shipments, but subsequent to that time the use of the automobile truck became a strong and potent factor. Consignments were therefore in much smaller lots, and market salesmen were required to devote the same time, energy, and skill for the disposal of a small consignment as had been given previously to carload shipments.

These business variations necessarily and inevitably wrought great changes in the market agency operations and required a greater marketing force and more intense activity. It does not seem reasonable that the trial examiner could have been accurate in his tentative report when he found that the new rates prescribed by the Secretary would check to the penny with the rates prescribed in the invalidated order.

2. There were market agencies operating at the stockyards which conformed to the schedules prescribed by the Secretary. Evidence that these agencies became involved in financial difficulties was rejected by the Secretary on the ground that it did not appear definitely that such financial difficulties arose from the new rates. It would seem that this evidence was compe-
1604 tent, at least for the purpose of showing what the experiences of the agencies were in their operations, to the end that the Secretary might have been informed as to the part his rates may have played in the financial difficulties of those agencies.

3. On the question of a fair and full hearing, it appeared that the Secretary was disposed to enforce the original rates prescribed by him. His order reopening the case confirmed that, although at that time the actual experience of the market agencies would have properly supplanted all prophecies and predictions and opinion evidence. The Secretary notified the market agencies that "the proceedings, findings of fact, conclusion, and order of June 14, 1933," should again be served upon them "as the tentative findings of fact, conclusion, and order of the Secretary of Agriculture in this proceeding."

The plaintiffs, or petitioners, were then given a limited time "within which to file exceptions to said tentative findings of fact, conclusion and order," etc.

A schedule derived from a hearing previously condemned by the Supreme Court as violative of due process was again put forward as a challenge to the petitioners to find fault with it. The offer of the petitioners to direct the inquiry into a reliable and dependable field of inquiry was unavailing. To refuse to consider competent evidence and to disregard the ordinary rules of logic and common experience is just as harmful to a litigant as if a tribunal clothed with quasi judicial authority had refused to hear the evidence at all.

4. The attitude of the Secretary was disclosed by his letter printed in the New York Times, as follows: "Actually, the effect is to give to the Kansas City commission men and their attorneys $700,000 of impounded money which rightfully belongs to the farmers." In addition to this, at the trial there was lack of
1605 frankness on the part of the government and a disposition not to make full disclosure of all the facts.

It is my view that the order of the Secretary is unreasonable and that it was without evidentiary support. Furthermore, the Secretary did not grant to the petitioners the full and fair hearing contemplated by law, and he was disposed too strongly in favor of one side in the controversy.

5. However, this proceeding is no longer an administrative matter under the Packers and Stockyards Act, but it is now simply a question as to who in equity and good conscience should have the impounded funds. On technical grounds the order of the Secretary of June 14, 1933, was invalidated, but notwithstanding this fact it is contended that the order was meritorious and that the facts duly considered would support it.

On this equitable issue the Secretary again tenders as reasonable a schedule of rates based upon a forecast derived from past experience, and asks that these be made to prevail over facts showing actual experience in substantially and radically alter conditions and circumstances. Clearly the rates thus derived are not now dependable and should be rejected as inapplicable to the facts and as unreasonable in the light of the actual facts.

Moreover, the Supreme Court did not intend by its last opinion to order a new trial, but simply that this court should determine the equities of the parties. This could have been accomplished by quick reference to the experience of the petitioners over the period June 14, 1933, to November 1, 1937, without the necessity of using opinion or speculative evidence.

The case of Atlantic Coast Line v. Florida, 295 U. S. 301, is decisive upon the facts here presented. The court, in referring

to the authority of the Interstate Commerce Commission under practically identical circumstances (loc. cit. 312), said:

1606 "The Commission was without power to give reparation for the injustice of the past, but it was not without power to inquire whether injustice had been done and to make report accordingly."

In doing this, the court further said, (loc. cit. 318):

"The claimants do not sustain the burden that is theirs by showing that the master set up a reasonable schedule. They must show that the other schedule, the one set up by the Commission, is unreasonable."

Even before that, loc. cit. 317, the court said significantly:

"There is a zone of reasonableness within which judgment is at large."

Therefore, according to the last opinion of the Supreme Court, 307 U. S. 183, the Secretary cannot prescribe a retroactive schedule of rates, but he may only challenge the reasonablenes of the rates in force. The court said, loc. cit. 198:

"A proceeding is now pending before the Secretary in which, as we have seen, he is free to determine the reasonableness of the rates."

This relates to the rates actually charged by the marketing agencies. It does not follow that the rates collected are unreasonable because the Secretary finds a different schedule reasonable, and particularly since the Secretary's schedule is predicated upon the assumption of facts admittedly no longer existing.

[File endorsement omitted.]

1607 In United States District Court

Dissenting Opinion of Judge Otis

Filed April 9, 1940

Otis, District Judge, Dissenting:

I regret I cannot concur with the conclusions reached by my colleagues and presented by them with their usual clarity and force. I have been reluctant to dissent. It has seemed to me that if I did not agree with associates so able, whose experience in the judicial service is much greater than my own, quite probably I should be wrong. I have not found it possible, however, despite all my endeavor, in this one matter, to go along with my colleagues. The issues involved are so important, the amount at stake so huge, that I conceive that every judge sitting on the court owes it to the Supreme Court and to the parties to contribute ac-

cording to the best of his understanding to what shall be the final decision. It may be that I have been motivated, although I am not conscious of it, by a desire to be consistent. (I should remember the well known saying: "Consistency is a virtue of small minds.") I wrote the two earlier opinions of the court, 8 F. Supp. 766, 23 F. Supp. 380.* In the first the court held that
1608 the Secretary's order (identically the same order as that now under review) was sustained not only by substantial evidence but by the weight of the evidence and that there was no justification for petitioners' contention that they had been denied a "full hearing." In the second opinion, in which special attention was given to the question of the Secretary's procedure, it was again held that the Secretary's order (identically the same order as that now under review) was sustained not only by substantial evidence but by the weight of the evidence and that the parties had been given a "full hearing." Judge Van Valkenburgh concurred, hesitatingly, in the first opinion. From the second opinion he dissented on the procedural issue only. Judge Reeves now has joined Judge Van Valkenburgh. I am left abandoned and alone in the position all once defended. There comes to my mind out of the long past school days the opening sentence of a sometime famous ballad: "The boy stood on the burning deck whence all but him had fled."

My colleagues, I thing, have not been able to accept a certain new philosophy—nor do I accept it, although I recognize it, and I bow to it when Congress incorporates it into a valid statute—a philosophy that exalts the administrative agency and correspondingly lessens the powers of courts of justice. Congress has said that, on judicial review, findings of fact made by such an agency, if supported by evidence, shall be conclusive. And
1609 so the judicial review becomes largely without significance.

It looks, not to substance, but to form. The overwhelming weight of the evidence—the testimony of twenty witnesses—may support one finding, a minimum of substantial evidence—the testimony of a single witness may support the opposite finding. If the administrative agency, actuated by pique or prejudice or class interest or a consideration of the number of votes to be gained by "the party," finds against the weight of the evidence, the reviewing court is helpless. And if, under compulsion of

*I wrote also the per curiam opinion (24 F. Supp. 214) announcing the judgment of this court, which was reversed in 307 U. S. 183. This court had held the Secretary's original order valid. The Supreme Court on review said it was invalid. This court had compelled a deposit of money by the petitioners "on the understanding and assurance that the fund so created would be returned if the Secretary's order were held invalid." This court thought it should abide by its pledged word. The Supreme Court, however, decided in 307 U. S. 183 that the fund which had been collected on a definite understanding should be disposed of as equitable principles might require.

law, the reviewing court affirms the agency, it is proclaimed to the world that the United States District Court or the Circuit Court of Appeals or the Supreme Court of the United States has endorsed and approved what the agency has done. It is not unnatural that judges should look with disfavor on such a consequence.

How superficial it is to compare such an arbitrary—possibly even dictatorial—fact-finding power with the fact-finding power of a jury. The jury is constantly under the supervising control of the judge. The judge excludes evidence that is irrelevant, immaterial, or otherwise incompetent. He reviews and sums up the case. He inspires the jury at the hour of its final functioning with the high ideals of justice and truth. And he may set aside whatever verdict the jury has returned.

1610 I ~~think~~ my colleagues have not been able to accept the new philosophy seen in another aspect. To them the "full hearing" which the law requires an administrative agency to give the parties means a hearing comparable in all important details to the historic judicial hearing, a hearing in the solemn and dignified atmosphere of a court room, where the testimony, received under the time-tried rules of evidence, is presented orally to a trained judge, to an impartial judge (the parties may have him removed for bias and prejudice if he is deemed not impartial), to a judge who hears the arguments of opposing counsel and thereafter decides the matters in issue. Is is a far cry, my colleagues think (and so think I) from that kind of hearing to such a hearing as that contemplated by, for example, the Packers and Stockyards Act, where the testimony is taken by an examiner (who may also be in fact active counsel for one of the contending parties), where the deciding power is vested in an official who never sees a witness, where the ultimate authority cannot practicably even read the evidence (although he may be compelled to say he has done so), where there is no satisfactory way under Heaven to dislodge a biased and prejudiced agency and secure another, and where the decision of the agency, so functioning, as to every issue of fact, if supported by any evidence (however defiant of the weight of the evidence), is made as conclusive

1611 as the command of a despot. My colleagues find it difficult to see "due process of law" in such a medley of ritual and form and shadow. I honor and respect them for their steadfastness.

Scope and Nature of Duty of District Court

1. The scope and nature of the duty of this court was made quite clear in the opinion of Mr. Justice Stone when this case

last was before the high tribunal, 307 U. S. 183. The rate-fixing order of the Secretary had been held invalid, not on the merits, but solely by reason of a defect in the procedure. The Secretary sought to remedy his procedural error by giving the parties another hearing in which he would avoid his earlier mistakes and make what the Supreme Court called a "redetermination" (l. c. 188) concerning whether the rates collected were reasonable. Until that "redetermination" is completed the district court should hold the fund impounded. When the "redetermination" has been made "it will afford a proper basis for the action of the district court in making disposition of the fund" (l. c. 193). "The court called on to ascertain, according to equitable principles,
the rights of the parties with respect to payments made
1612 under the voidable order, could take into account the subsequent determination of the administrative agency as the basis of its order" (l. c. 196). The Secretary's "determination, if supported by evidence and made in a proceeding conducted in conformity with the statute and due process, will afford the appropriate basis for action in the district court in making distribution of the fund in its custody" (l. c. 198). "The district court * * * with the full record of the Secretary's proceedings before it, including findings supported by evidence, * * * will have the appropriate basis for its action and will be able to make its order of distribution accordingly" (l. c. 198).

The duty of this court then is now to ascertain: (1) whether the Secretary's "redetermination," his "final order in the proceedings pending before him" (l. c. 198), is supported by evidence; (2) whether it was made after a "full hearing"; and (3) to distribute the fund, with the final order as the basis of distribution, if there was supporting evidence for the order and a "full hearing." Of course the burden of proof is on those who attack the Secretary's order, which presumptively, is valid.

Is the Order Supported by Evidence?

2. I shall devote little space to a discussion of the first inquiry which the Supreme Court has said we must pass upon. Twice this court has held, as I have noted (and the Supreme Court
1631 emphatically called attention to the fact in the third Morgan opinion—307 U. S. l. c. 188), that an order of the Secretary, identical with the order* now under review, was supported by substantial evidence. Indeed, as also I have noted this

*I have used in this opinion the word "order" to designate the Secretary's "redetermination" as to the unreasonableness of the filed rates and as to what would have been reasonable rates because the Supreme Court used that word in 307 U. S. l.c. 198. There is, of course, a distinction between the Secretary's original prospective order and this last retrospective order.

court went further and held the order was sustained by the weight of the evidence. But exactly the same evidence (and a little additional evidence) is before the court now as was before it on the first and second hearings. With the same evidence and the same order again before the court how can we say that the order, which we have hitherto said was supported by the weight of the evidence, is not supported by any evidence? Shall we forget to ignore on Wednesday what we said on Tuesday and also on Monday? Shall we too repudiate the doctrine of stare decisis, not only generally, but in later stages of a case after clear and definite rulings in earlier stages of the same case? To do these things would make me blush with all the changing colors of the chameleon. I hasten to say that my colleagues are not embarrassed because they sincerely believe that somehow the whole picture has changed with the passage of time, as the turn of a kaleidoscope varies what the observer beholds.

1614 For myself, I am helped by the imagery suggested by the terminology which judges and lawyers are wont to use. We speak of "substantial evidence," of a "scintilla of evidence," of the "weight of the evidence." They are terms which suggest a pair of balances. A weight is deposited in one balance. The beam is deflected. That is "substantial evidence." Again, weights are alternately deposited in each balance. Now the beam again is deflected on that side where is the "weight of the evidence." Perhaps only an airy feather is deposited in a balance. It is too light to have any effect—a mere "scintilla of evidence."

On the first presentation of this case to us and again on the second presentation we saw the evidence of the petitioners deposited in one balance and that of the respondents in the other. The index showed that the evidence in respondents' balance not only was "substantial evidence," but also that the "weight of the evidence" was there. Now on the third presentation nothing has been taken away from respondents' balance, nothing has been taken away from petitioners' balance. A little has been added on petitioners' balance. Perhaps that little that has been added is enough to change the "weight of the evidence" from one side to the other. But certainly the mere addition of something in one balance cannot have the effect of changing the nature of what is in the other balance from what was "substantial evidence" to a mere "scintilla" or to nothing at all.

1615 I do not doubt that my colleagues would agree at once with such elementary truths. It is their view, if I understand it rightly, that what was "substantial evidence" supporting at the earlier hearings the Secretary's order was only prophesy (competent perhaps when only prophesy was available) and that it loses all value—ceases to be "substantial evidence"—when con-

tradictory evidence based on actual experience is available. It is convincing reasoning, as clearly was pointed out by Mr. Justice Cardozo in West Ohio Gas Company v. Public Utilities Commission, 294 U. S. 63. But the application of that reasoning to this case is most doubtful. If one looks to the record and not to the dramatically worded briefs of petitioners' learned counsel (which over and over again take a little, a scarcely discernible mole-hill, and build it up into a towering, snow-clad Everest) he will discover how inapplicable the excellent abstract reasoning of my colleagues is to the facts here presented. The simple truth is, unless I err (and I err frequently and with much facility), the simple truth is that there is in this record no competent evidence showing conclusively out of actual experience what would have been the effect of the Secretary's order, if its enforcement had not been enjoined. At best, the evidence tendered in this connection was shadowy, based on hearsay and speculation. It fell far short of that cogency that would have been necessary to transmute into thin air what this court hitherto held was "substantial evidence."

1616 Requirement of "Full Hearing" Met

3. Just as this court twice has held the Secretary's order was supported by substantial evidence, so it twice has held that the Secretary gave the parties that "full hearing" the law requires. Certainly the showing of "full hearing" is much stronger now. Nor should that be surprising. Since the last hearing the Secretary has been taken to the "wood shed" by the Supreme Court (he will not object, I trust, if I choose a figure from our common rural background). He came out chastened, with an understandable desire thereafter to walk the chalk line. It would be strange if he had not profited from his lesson. My colleagues, however, who now attack on both front and rear, who now smite the Secretary, hip and thigh, think he has wandered from the true path even when he just had been given a chart and compass.

Why did the Supreme Court hold in the second Morgan case (304 U. S. 1) that the Secretary had not given a "full hearing"? The essence of the opinion is that he did not do so because he accorded the petitioners no reasonable opportunity "to know the claims of the opposing party and to meet them" (l. c. 18, 19). (1) There was no specific complaint at the inception of the proceeding (l. c. 19). (2) There was no report by the examiner (l. c. 19). (3) No findings were proposed by the government (l. c. 19). (4) The oral argument before the Secretary did not reveal the claims of the Government in an adequate manner
1617 (l. c. 19). (5) The Government did not submit a brief setting out its claims (l. c. 19).

The Supreme Court did not say and clearly did not intend to say that there should have been a revelation to the petitioners of the Government's claims by all of the methods mentioned in the foregoing analysis as (1), (2), (3), (4), and (5), but that, before the Secretary acted, the claims of the Government should have been made known to the petitioners by some one or more of those methods or by some other method. It is important, moreover, to bear in mind that the Supreme Court distinguished between the Secretary, the administrative tribunal with power to decide, and the Government, the adversary party. The distinction is not clear cut since the Government, in a proceeding before the Secretary, is made up of attorneys and examiners appointed by and representing the Secretary (in a sense the Government is the Secretary's alter ego), but nevertheless it is a real distinction. The Supreme Court did not say and did not intend to say that the petitioners were entitled to be heard not only as to what, if any, were the claims and contentions of the Government, the adversary party, but also as to each and all of the conclusions reached tentatively or otherwise, after submission, by the administrative tribunal on the way to its final judgment. The Supreme Court said (l. c. 18):

1618 "We agree with the contention that it was not the function of the court to probe the mental processes of the Secretary in reaching his conclusion if he gave the hearing which the law required."

This opinion of the Supreme Court, when it has thus been analyzed, may be laid to one side. The petitioners do not even assert in the briefs submitted on the procedural issue that the standards set up in this opinion and held not to have been met were not fully satisfied at the last proceeding before the Secretary.* There is now no suggestion that the petitioners were not fully advised by an examiner's report, by written briefs, and by full statements in oral argument, exactly what the contentions and claims of the Government were, with full opportunity for counter argument. Indeed it is inconceivable that the Secretary would not have complied with the requirements of "full hearing" so plainly and so recently set out by the Supreme Court.

1619 It is true that in the oral argument before this court it was suggested that certain findings additional to those recommended by the Government were made in his final de-

*It is impossible to escape the conclusion that the petitioners recognize that the last proceeding before the Secretary was strictly in conformity with the requirements of a "full hearing" set up by the Supreme Court in the second Morgan case. Thus on page 12 of petitioners' brief now submitted to this court on the procedural issue it is said: "The Secretary's reopening order of June 2, 1938, recognized only one defect in the prior hearing before him, to wit, the failure to accord to the market agencies the opportunity to argue with respect to the invalidated findings." But that was the only defect in the hearing which the Supreme Court pointed to in the second Morgan case. Petitioners seem to concede that that defect at least was avoided in the last proceeding before the Secretary.

cision by the Secretary and it was contended that petitioners should have had a chance to present an argument concerning these findings. The argument is not valid. It fails to make the distinction between the Secretary as the tribunal authorized to make a decision and the Secretary as prosecutor through a Bureau in his Department and his subordinates. The Supreme Court makes the distinction. The adversary party (adversary to petitioners) is not the Secretary as tribunal but the prosecuting subordinates in the Bureau of Animal Husbandry. They are the Government in this case. Petitioners are entitled to know what the Government contends and to have opportunity to answer those contentions before the tribunal makes its decision. The petitioners are not entitled to be heard upon the tentative conclusions the Secretary has reached, in the evolution of his though, after submission and before final judgment.

The truth is the petitioners do not rely upon the so-called second Morgan opinion and decision (in 304 U. S.) which reversed the judgment of the court after this court had found that the Secretary had given the petitioners a "full hearing." They rely upon what was said in the so-called first Morgan opinion and decision (298 U. S. 468). That decision therefore must be analyzed and the last proceeding before the Secretary tested by its standards.

This court did test the original proceeding before the Secretary by the standards set up in the first Morgan decision. A
1620 majority of this court held that by these standards petitioners had been accorded a "full hearing." The majority of this court after a full discussion of the matter (23 F. Supp. pp. 382, 383) declared the Secretary had done everything the law required of him and made a full finding of fact (23 F. Supp. p. 373, 2nd column) as to what in that connection he had done.

In the second Morgan case the Supreme Court did not criticize the opinion of this court or its finding of fact just referred to. The opinion of the Supreme Court does not intimate that any fact found by this court was not correctly found. The Supreme Court decided the case upon an argument which never was presented to this court by pleadings or briefs or orally, namely—that petitioners did not have a "full hearing" in that the Government's claims and contentions were presented to the Secretary ex parte, that they had no opportunity to reply to those claims and contentions before the Secretary reached his decision. Except for that new argument advanced for the first time in the Supreme Court there is no reason for believing that the judgment of this court on the procedural issue would not have been affirmed.

The Supreme Court said in the first Morgan opinion that a "full hearing" does not require that there should be an examiner's

report to which the parties might except (l. c. 478, but see
1621 304 U. S. l. c. 21). A "full hearing" does not mean that the evidence taken may not be sifted and analyzed by subordinates and only the results of that sifting and that analysis submitted to the Secretary (l. c. 481). The Supreme Court said only that a "full hearing" means—"there must be a hearing in a substantial sense. And to give the substance of a hearing * * * the officer who makes the determinations must consider and apprise the evidence which justifies them." It is intimated also, but not squarely held, that opportunity for argument, either written or oral, before the Secretary must be afforded.

Now in what way is it charged that these broad standards, which this court held were fully satisfied in the original proceeding, were not satisfied in the last proceeding? Petitioner's brief advances five contentions.

The first contention of petitioners, that the petitioners were denied a "full hearing" because there was not an impartial tribunal, needs be discussed but briefly. The contention is bottomed on a letter the Secretary wrote in such a moment of intemperance as comes to all (even to some judges, who, however, are sufficiently cautious not to put what they freely say in written form), in which he said—after this litigation had been in progress for several years and had been twice decided by this three-judge court in the Secretary's favor—in which he said in substance—the three-judge court which alone has passed upon the merits was right, the money "rightfully belongs to the farmers" who paid commissions.

1622 Certainly no such statement made by a trial judge in a constitutional court, after a first trial, would support an affidavit of bias and prejudice against him at a second trial. Moreover no statute authorizes an affidavit of bias and prejudice against the Secretary of Agriculture under any circumstances, just as there is none which authorizes an affidavit of bias and prejudice against a justice of the Supreme Court or a judge of a Circuit Court of Appeals.

It is argued that, absent any statute setting up machinery for disqualifying the Secretary and securing a substitute (authorizing the Secretary, for example, to call in the Postmaster General), the right to disqualify is implied in the phrase "full hearing." Does not a "full hearing" require, it is asked (and Justice Brandeis, speaking in 298 U. S. at p. 73, is quoted), "that the trier of the facts shall be an impartial tribunal?"

Of course the "full hearing" required by the statute implies an impartial tribunal. Just so the Constitution and laws require that the Supreme Court and the circuit courts of appeals shall be impartial tribunals. The remedy if a circuit judge shall play

the tyrant is by appeal to the Court of Impeachments. The remedy, if the Secretary shall violate his duty, is by appeal to the President to remove him or to the Court of Impeachments. The celebrated case of Tumey v. Ohio, 273 U. S. 510, cited by petitioners, has no applicability whatever. In that case the
1623 Supreme Court held, not that a decree of a judge not impartial is void, but that a state statute creating a judicial system in which judicial partiality certainly would arise, violates the due process clause of the Fourteenth Amendment.

The second contention—that the Secretary initiated and conducted the last proceeding in an unfair manner—is hyper-technical. It disregards the broad interpretation rightfully placed by the Supreme Court on the meaning of "full hearing." That interpretation ignores mere mechanics and considers only the right of parties (1) to have the ultimate decision made by the Secretary upon the evidence, after it has been sifted and analyzed for him by his subordinates, (2) to be advised of adversary contentions, with (3) a chance to be heard concerning them, before judgment.

This second contention is said by petitioners to be supported by the reasoning of Fitchburg Steam Engine Co. v. Potter, decided by the Supreme Court of Illinois in 1904, but the inapplicability of that case is at once apparent to him who studies it. It is absurd to speak of the findings with which the Secretary began the last proceeding as "tainted" findings, as petitioners in this connection speak of them, or to suggest that the examiner who made them should not again have been permitted to act. There is no basis in anything the Supreme Court ever has said for extravagances like these. It was not that the findings were "tainted" nor that the examiner in any way had exceeded
1624 his authority, that led to the reversal of former judgment of this court. It was the error of the Secretary that led to that result, his failure to give petitioners notice of the Findings and a chance to oppose them in argument. That alone brought about the reversal.

The third contention—that the notice given by the Secretary was not a notice of the precise kind of proceeding which actually was conducted—deserves no serious consideration, unless the petitioners also say—and, of course, they do not say it—that they had no actual notice of what kind of proceeding was being conducted by the Secretary and for what purpose it was being conducted long before the proceeding was ended.

The fourth contention—that the Secretary did not sufficiently consider the evidence—is based wholly upon the Secretary's own testimony, taken subject to the objection that the inquiry into

what he had read and had not read was improper. This court took that objection under submission with the case.

The objection ought to have been sustained. The Secretary's duty to afford a "full hearing" is the same, not in details, but in fundamentals, as that of a judge to whom a case is presented in court (certainly the Secretary's duty is not circumscribed in some closer fashion). Literally thousands of cases are submitted to federal district judges upon agreed statements of facts or upon deposition evidence not read in open court (I just have concluded a long trial in which depositions covering thousands of pages were offered in evidence but not read in court.) Has
1625 anyone ever heard of a court of appeals, reviewing such a case, entertaining arguments that the trial judges did not read and consider the evidence? Certainly not. The presumption is conclusive that the trial judges have done their duty.

This court heretofore (before the first Supreme Court decision in this case) passed upon the same record as was presented to the Secretary. Our duty, as we thought it might be, was identical, in the respect now considered, with that of the Secretary, that is, to determine from the weight of the evidence whether the Secretary's judgment was right or wrong. A record made up of thousands of pages and of hundreds of exhibits was handed to the court. Did any of the judges read all that record or examine all those exhibits?

What the judges of this court did (and what, I doubt not, the justices of the Supreme Court will do when this case reaches them) was to read and hear the summaries of the evidence which the parties made in their written and oral arguments (perhaps occasionally "dipping into the transcript") and to hear and consider their respective contentions. That was a "full hearing," a judicial hearing.

Even if the objection to the Secretary's testimony should be overruled, the contention now considered is without force. To contend that the Secretary personally must have read any part of the original transcript of testimony is to defy the clear
1626 holding of the Supreme Court that he may have the testimony summarized and analyzed by his subordinates. The Supreme Court did not say that the Secretary must read the very words of some of the testimony. The Supreme Court did not espouse the theory that the Secretary's subordinates probably would undertake to deceive the Secretary in their summaries and analyses. (It is regrettable that most honorable counsel sometimes are willing to suggest that men equally honorable and unselfish—whose only fault is that they are public servants—are capable of intentional deception.) If the petitioners did not

like the summaries prepared by the Secretary's subordinates (or if some of the testimony was not summarized by them), is there any suggestion that counsel for petitioners were prevented from submitting their own summaries? Who prevented them from summarizing anything they desired to summarize, in their briefs, in supplements to their briefs, in their oral arguments? Are they not content that the Secretary read and considered their summaries? Must he, the Secretary of Agriculture, the head of a great executive department of the Government, must he not only check up on his own subordinates to ascertain whether they have imposed upon him but must he also check the summaries of counsel for petitioners to make certain that they did not understate their case? And if counsel for petitioners did not present out of the record, in summarized form, whatever they desired the Secretary should especially consider, whose fault is that? Even a man sentenced by a trial judge to death, if the trial judge gave him every opportunity to be heard, would
1627 not be listened to by an appellate court with much patience, if his only complaint was that he did not take advantage of his opportunity.

The fifth contention (the only remaining contention on the procedural issue presented to this court) is that the Secretary failed to find that the rates charged by the market agencies were unreasonable. He found only that "the rates and charges now under investigation contain rates and charges which are unreasonable and unjustly discriminatory." Petitioners give little space in their brief to this contention. The play is upon the word "contain." The Secretary should have used the word "are," where he used "contain." A mediaeval scholastic would have loved this sort of argument, bottomed on a fine distinction drawn between two expressions which certainly are here essentially the same in meaning, although, using a word micrometer, one might discover a faint overlapping. If a schedule of rates contains rates which are unreasonable is not the schedule unreasonable? But I shall give the contention as little space as petitioners give it. I know that a drowning man seizes upon straws.

1628 Conclusion

4. My conclusion is that (1) it has not been proved that the Secretary's order is not supported by substantial evidence, (2) that it has not been proved that the Secretary did not give petitioners a "full hearing," and (3) that the fund now held by the clerk of this court and amounting to $586,093.82 should, in equity and upon the basis of the Secretary's order, be repaid to the farmers from whom it was collected.

It is a pleasure to add a word attesting my personal appreciation (shared, I am sure, by my colleagues) for the superb, lawyer-like, scholarly presentation of their respective contentions by counsel who have appeared in this court in this case: Mr. Gage, Mr. Cowherd, and Mr. Cooke for the petitioners; Mr. Berge, Mr. Cox, and Mr. Wilson for the respondents.

[File endorsement omitted.]

1629 [Clerk's certificate to foregoing transcript omitted in printing.]

1630 In Supreme Court of the United States

Statement of points on which appellants intend to rely and of parts of record necessary for consideration thereof

Filed Dec. 21, 1940

The appellants state that the points on which they intend to rely are the following:

1. The Court erred in holding that the order of the Secretary of Agriculture issued on June 20, 1939, which determined just and reasonable rates to be charged and collected for stock yard services by market agencies in buying and selling livestock at the Kansas City public stock yard during the period from July 22, 1933, to November 1, 1937, is invalid and not the appropriate basis upon which to distribute the fund impounded in the District Court during said period pursuant to an interlocutory order entered by the Court on July 22, 1933, and continued in effect from time to time thereafter.

2. The Court erred in holding that the acceptance by the Court of the rates contained in the Secretary's order of June 20, 1939, as the basis for the distribution of the said impounded funds would produce an unjust, inequitable, and unlawful result.

1631 3. The Court erred in denying the motion of the defendants for an order distributing the said impounded funds in accordance with the determinations contained in the order of the Secretary of Agriculture issued on June 20, 1939.

4. The Court erred in granting petitioners' motion for the distribution of the said fund to them and in ordering the said fund so distributed.

5. The Court erred in holding that petitioners did not receive from the Secretary of Agriculture the full hearing required by the Packers and Stockyards Act.

6. The Court erred in holding that petitioners did not receive from the Secretary the full, fair and open hearing required by the due process clause of the Fifth Amendment to the Constitution of the United States.

7. The Court erred in holding that the Secretary of Agriculture was not an impartial trier of the facts.

8. The Court erred in holding that the Trial Examiner was not an impartial trier of the facts.

9. The Court erred in holding that the Secretary denied to petitioners the full and fair hearing before an impartial tribunal as a trier of the facts contemplated and required by law.

10. The Court erred in holding that the Secretary had a fixed opinion and preconceived conviction as to the rightful ownership of the fund impounded in the District Court and was determined that the result of any future proceeding before him would be the awarding of the said impounded funds to the shippers of livestock from whom the fund was derived.

1632 11. The Court erred in holding that the evidence offered by the Government at the reopened administrative hearing cannot be considered as substantial evidence with respect to the impounding period from July 22, 1933, to November 1, 1937.

12. The Court erred in holding that the Secretary of Agriculture did not personally weigh or appraise the evidence either in its original form or as sifted and analyzed by his subordinates, but in determining upon the findings issued on June 20, 1939, adopted as his own the findings contained in the report of the trial examiner.

13. The Court erred in holding that the object of the Secretary of Agriculture throughout the reopened proceeding was to procure the validation nunc pro tunc of the invalidated order of June 14, 1933.

14. The Court erred in holding that throughout the reopened proceeding the Secretary of Agriculture entered a misconception as to the meaning and import of the prior decisions of the Supreme Court.

15. The Court erred in holding that the Secretary of Agriculture made no effort to ascertain the actual reasonableness of the rates charged by petitioners during the impounding period on the basis of actual experience.

16. The Court erred in holding that the hearing accorded to petitioners was perfunctory and the correction of the procedural errors contained in the prior proceedings unsubstantial.

17. The Court erred in holding that the Trial Examiner excluded from consideration facts and circumstances relevant to the determination to be made.

18. The Court erred in holding that the Secretary of Agriculture excluded from consideration in the reopened proceeding facts and circumstances material and relevant to the determination he was undertaking to make.

1633 19. The Court erred in holding that the findings contained in the order issued by the Secretary of Agriculture on June 20, 1939, are not supported by substantial evidence and that the said order is unreasonable and without evidentiary support.

20. The Court erred in holding that the rates prescribed in the order of June 20, 1939, did not during any year of the impounding period provide petitioner market agencies with a margin of $100,923.57, as stated in paragraph 163a of said order, between the revenues produced under the rates and the costs and profits found reasonable by said order.

21. The Court erred in holding that the Secretary of Agriculture incorrectly estimated the yield from said rates.

22. The Court erred in holding that in computing the reasonable cost to petitioners of doing business during the period of impounding the Secretary failed to make a proper annual allowance for social security taxes, public liability insurance, administrative and general expenses for the support and maintenance of the Kansas City Live Stock Exchange, and for the entire rate case expense sustained by petitioners throughout the administrative and court proceedings in this case amortized over the 4.27 year period covered by the order of June 20, 1939.

23. The Court erred in holding that by reason of the Secretary's disallowance of the items of cost mentioned in the preceding paragraph, petitioners sustained a yearly deficit in their operations.

24. The Court erred in holding that there was an increase, during the impounding period, in petitioners expenses of operating and conducting their businesses which was not provided for in the schedule of rates prescribed in the order of June 20, 1939.

1634 25. The Court erred in holding that this proceeding is no longer strictly an administrative matter under the Packers and Stockyards Act.

26. The Court erred in holding that the burden of making a determination which would equitably support a distribution of the impounded funds and of finding petitioners' filed rates unreasonable was upon the Secretary of Agriculture and that he failed to sustain the aforesaid burden.

27. The Court erred in holding that the petitioner market agencies are entitled to have the impounded funds restored to them.

28. The Court erred in overruling defendants' objection to the introduction into evidence of the deposition of Henry A. Wallace taken by appellants at the former hearing in the District Court, together with the exhibits attached to such deposition.

29. The Court erred in overruling defendants' objection to the introduction into evidence of the testimony and exhibits introduced in the District Court upon the examination of the witness John A. Roberts at a former hearing in this case.

30. The Court erred in overruling defendants' objection to calling Henry A. Wallace as a witness at the last hearing in the District Court, to swearing him as a witness, to permitting him to be asked any questions on direct examination or requiring him to answer any questions.

31. The Court erred in permitting Henry A. Wallace to be questioned, and in requiring him to answer, over defendants' objections, as to whether or not he had read and examined certain evidence and exhibits presented in the course of the administrative hearings.

32. The Court erred in permitting Henry A. Wallace to be questioned and in requiring him to answer, over defendants' objections,
as to whether or not any communications were received by
1635 him from his assistants and subordinates after the oral
argument before him and prior to his issuance of the order of June 20, 1939.

33. The Court erred in requiring Henry A. Wallace to produce, and in overruling defendants' objections to the introduction in evidence of, communications received by the said Henry A. Wallace from his assistants and subordinates after the oral argument before him and prior to his issuance of the order of June 20, 1939.

34. The Court erred in permitting Henry A. Wallace to be questioned and in requiring him to answer, over defendants' objections, as to whether or not he read the said communications from his assistants and subordinates.

35. The Court erred in permitting Henry A. Wallace to be questioned and in requiring him to answer, over defendants' objections, as to whether or not, during the course of the administrative hearings and after the submission of the case on oral argument, he had conferred with the Trial Examiner whom he had appointed to receive evidence at the administrative hearings, and in requiring the said Henry A. Wallace to testify as to what communications he received from the said Trial Examiner in the course of such conferences.

36. The Court erred in permitting Henry A. Wallace to be questioned and in requiring him to answer, over defendants' objections, as to whether or not he had personally written or revised certain portions of the order of June 20, 1939, and in requiring the said Henry A. Wallace to testify as to who did write or revise said portions of the order.

37. The Court erred in permitting Henry A. Wallace to be questioned and in requiring him to answer, over defendants' objec-

tions, as to his mental processes in the consideration of certain factors entering into his decision of the issues before him.

1636 38. The Court erred in failing to enter such order or orders with respect to the determination of the ownership, and to the disposition, of the impounded funds as were and are consistent with right and justice and with the laws of the United States.

The appellants state that the following parts of the record are necessary for the consideration of the foregoing points, and therefore designate them as the parts of the record to be printed by the Clerk of the Supreme Court of the United States:

1. Petition in Cause No. 2328. Exhibit A—Proceedings before the Secretary of Agriculture, Findings of Fact, Conclusion, and Order issued June 14, 1933. Exhibit B—Petition for reinvestigation and rehearing. Exhibit C—Tables.

2. Statement as to petitions in Causes Nos. 2329 to 2378, inclusive (see Exhibit C).

3. Temporary restraining order, dated July 22, 1933.

4. Order continuing in force temporary restraining order, dated September 19, 1933.

5. Defendants' answer to said petitions, dated November 25, 1933.

6. Decree of December 20, 1934.

7. Stipulation as to consolidation.

8. Order consolidating causes and denying petitions for rehearing and entering joint and final decree, dated June 20, 1935.

9. Mandate of Supreme Court, dated June 2, 1936.

10. Supplemental answer, filed July 11, 1936.

11. Amended application of petitioners for leave to amend petitions.

1637 12. Order dated November 6, 1936, granting leave to amend petitions.

13. Answer to petitions as amended, dated December 4, 1936.

14. Decree of July 9, 1937.

15. Order continuing temporary restraining order, filed August 16, 1937.

16. Stipulation and Modification of Order of June 14, 1933, signed October 14, 1937, by Henry A. Wallace.

17. Modification of Order of June 14, 1933, signed November 13, 1937, by Henry A. Wallace.

18. Mandate of Supreme Court dated June 3, 1938.

19. Motion for order staying distribution of impounded funds, filed June 7, 1938. Exhibit A—Order Reopening Proceedings, dated June 2, 1938, signed by Henry A. Wallace.

20. Reply to motion for order staying distribution of impounded funds.

21. Answer of New Amsterdam Casualty Company to motion for order staying distribution of impounded funds.

22. Petition for restitution of impounded funds, filed June 11, 1938.

23. Order on petition for restitution, filed June 18, 1938.

24. Decree of June 18, 1938.

25. Mandate of Supreme Court dated June 10, 1939.

26. Motion for order to show cause. Exhibit A—Findings of Fact, Conclusion, and Order issued by the Secretary of Agriculture on June 20, 1939.

27. Order granting motion for order to show cause.

28. Joint and several return of petitioners to order to show cause.

1638 29. Separate return of New Amsterdam Casualty Company to order to show cause.

30. Notice to take depositions of Henry A. Wallace upon oral examination.

31. Motion to strike portions of joint and several return of petitioners to order to show cause.

32. Motion for order that deposition of Henry A. Wallace not be taken or in alternative that deposition be taken by written interrogatories.

33. Ruling of District Court on motion that depositions not be taken and motion to strike portions of return.

34. Answer to joint and several return to order to show cause.

35. Answer to separate return of New Amsterdam Casualty Company to order to show cause.

36. Motion for order directing Secretary of Agriculture to produce and file record and granting right of inspection.

37. Ruling on motion for production and inspection.

38. Narrative statement of evidence in hearing on order to show cause.

39. Order approving narrative statement of evidence.

40. Stipulation re transmitting original exhibits. Exhibit A—Descriptive list of exhibits.

41. Decree of May 29, 1940.

42. Findings and conclusions, filed May 29, 1940.

43. Supplemental findings and conclusions.

44. Petitioner's request for findings and conclusions.

45. Defendants' objections to petitioners' request for findings and conclusions and defendants' request for additional findings and conclusions.

1639 46. Petitioners' reply to defendants' objections to petitioners' proposed findings and conclusions, and request for additional findings.

47. Petition for appeal.

48. Assignment of errors and prayer for reversal.
49. Notice of appeal.
50. Order allowing appeal.
51. Notice to Attorney General of the State of Missouri.
52. Motion for stay of final order and decree.
53. Order allowing stay.
54. Praecipe for transcript.
55. Opinion, Otis, J. (October 29, 1934).
56. Concurring opinion, Van Valkenburgh, J.
57. Opinion on petition for rehearing, Van Valkenburgh, J. (June 20, 1935).
58. Opinion, Otis J. (July 2, 1937).
59. Dissenting opinion, Van Valkenburgh, J.
60. Opinion, per curiam (June 18, 1938).
61. Opinion, Van Valkenburgh, J. (April 9, 1940).
62. Concurring opinion, Reeves, J.
1640 63. Dissenting opinion, Otis, J.
64. Citation and writ of service.

FRANCIS BIDDLE,
Francis Biddle,
Solicitor General.

This 16th day of December 1940.

Service of the foregoing Statement of Points to be Relied on and Designation of Parts of Record to be Printed is hereby acknowledged this 16th day of December 1940.

FREDERICK H. WOOD,
Frederick H. Wood,
JOHN B. GAGE,
John B. Gage,
Counsel for appellees.

[File endorsement omitted.]

[Endorsement on cover:] File No. 44989. W. Missouri, D. C. U. S. Term No. 640. The United States of America and Secretary of Agriculture, Appellants, vs. F. O. Morgan, Doing Business as F. O. Morgan Sheep Commission Company, et al. Filed December 21, 1940. Term No. 640, O. T. 1940.

U. S. GOVERNMENT PRINTING OFFICE: 1941